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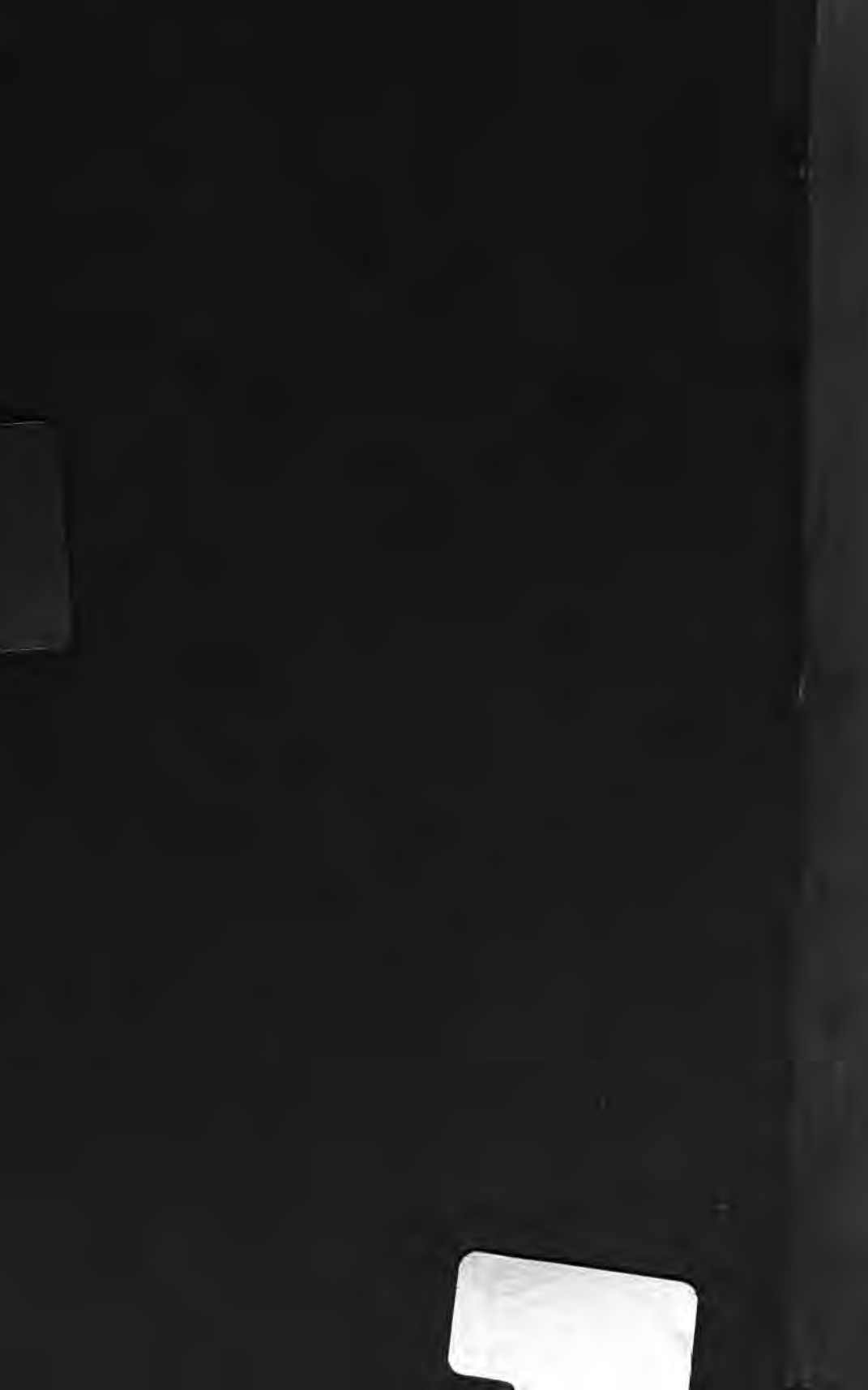
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REPORT

OF THE

SIXTH ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION,

HELD AT

SARATOGA SPRINGS, NEW YORK,

August 22d, 23d, and 24th, 1883.

Joseph M. Symonds.

PHILADELPHIA:

PRESS OF GEORGE S. HARRIS & SONS, 718-724 ARCH STREET.

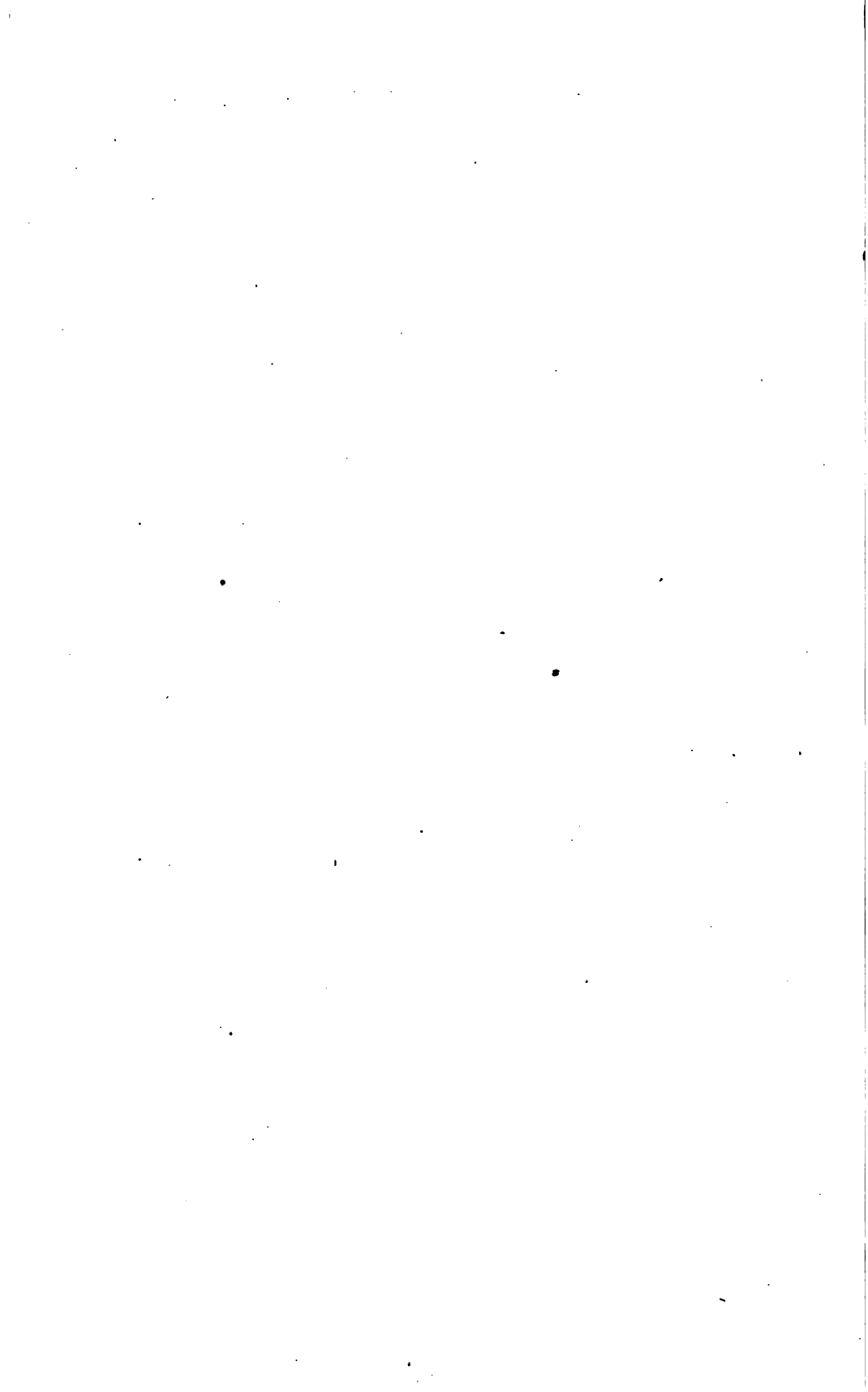
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TRANSACTIONS OF THE SIXTH ANNUAL MEETING
OF THE
AMERICAN BAR ASSOCIATION,
HELD IN
PUTNAM HALL, SARATOGA SPRINGS, N. Y.,

August 22d, 23d, and 24th, 1883.

Luke P. Poland, of Vermont, Chairman of the Executive Committee, called the meeting to order at about ten o'clock on Wednesday morning, August 22d. Mr. Poland said:

We have met to hold the Sixth Annual Meeting of the American Bar Association, and the first business in order is the Annual Address by the President of the Association. I have, therefore, the pleasure of introducing to you the President, General Lawton.

The President then read his Address. (*See Appendix.*)

Upon conclusion of the Address, Judge Poland said:

I am instructed by the General Council to propose, on their behalf, nominations of the following persons members of the Association.

(*See List of Members Elected at the end of the Minutes of Proceedings.*)

On motion of C. C. Bonney, the Report was received and adopted.

On Judge Poland's motion, a recess of ten minutes was taken, in order to allow time for the members from the several states to consult about nominations for the General Council. After the recess, the Secretary read the list of states, and the General Council was elected. (*See List of Officers.*)

The Secretary then read his Report, as follows, viz.:

(a) Obituary notices have been prepared of members who have died during the year, and they will be printed with the report of our *Transactions*.

(b) The number of members on the Roll of last year is 581, of which 94 were added at the last meeting, and 107 members signed the Register, showing their attendance at the meeting of last year. There have been 706 members in all since the commencement of the organization, showing that 125 have died, resigned, or dropped out.

(c) The Executive Committee have had under consideration the subject of an amendment to the Constitution, in regard to the election of members, and their Chairman will report an amendment.

(d) The Association, at last meeting, voted, by 38 ayes to 27 noes, to meet this year at Green Brier, White Sulphur Springs, in West Virginia; but the proprietor of the hotel found it impossible to accommodate us.

(e) The Executive Committee have adopted the following by-law, which is proper to be submitted to the Association for its approval, viz.:

"The Secretary and Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges by which our *Transactions* can be annually exchanged with those of other Associations in foreign countries, interested in jurisprudence or governmental affairs; and also that the Secretary exchange

our *Transactions* with those of the State and Local Bar Associations; and that all books thus acquired be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the former agrees to such deposit."

(f) At the last meeting of the Association, I requested vice-presidents, members of the General Council, and others from the several states, to suggest names to be laid before the Executive Committee, to assist the committee in making selections of proper persons to read papers; and if this course be approved, I will continue it.

(g) Two thousand copies of the Annual Report were printed last year. The work was done in Philadelphia, under the supervision of the Treasurer. As the work can probably be done there better than in Baltimore, I will continue that arrangement. I am indebted to the Treasurer also for his attention to printing various notices and circulars at my request.

(h) There are delegates present from several state associations, whose names I will announce hereafter.

(i) There are a few more members present at this meeting than at the last meeting.

Wednesday Evening, August 22, 1883.

The meeting was called to order by the President, at eight o'clock.

Judge Poland said:

Mr. President,—I am instructed by the Executive Committee, to propose an amendment to Article IV., on the Election of Members.

The first clause of that article reads thus: "All nominations for membership shall be made by the Local Council of the state to the Bar of which the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council on vote by ballot." In all cases where gentlemen have been recommended for admission through a Local Council, there has been no difficulty; but where nominated at the Annual Meeting, the General Council have had very little means of ascertaining about the qualifications of gentlemen proposed. Therefore we think that the Constitution ought to be amended so as to afford a sufficient guarantee. We therefore propose to amend the second clause thus: It now reads, "The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state." Now we propose to add, "*Provided*, That no nomination shall be considered by the General Council unless accompanied by a statement in writing by at least three members of the Association from the same state with the person nominated, or, in their absence, by members from a neighboring state or states, to the effect that the person nominated has the qualifications required by the Constitution, and desires to become a member of the Association, and recommending his admission as a member."

The amendment was then adopted.

Judge Poland, as Chairman of the Executive Committee, then proposed an amendment to Article X. of the By-Laws, and said:

There is no provision in the article for keeping any record of the doings of the General Council. Some member of the committee generally acts as secretary. The

Secretary of the Association has had a difficulty in making up the record of what is proposed by General Council. The amendment proposed is as follows: "The Secretary of the Association shall be the Secretary of the General Council." It is proposed to add to Article X. by inserting it under the first paragraph.

The amendment was adopted.

W. H. H. Russell, of New York, offered the following resolution:

Whereas, The Lord Chief Justice of England is about to visit this country; *Therefore, be it resolved*, That the President and Secretary of this Association send an invitation by telegraph to Lord Chief Justice Coleridge and his associates to attend this meeting upon their arrival in New York City.

Richard Vaux, of Philadelphia, said:

It is a subject which has engaged the attention of this body, as I know. It would be extremely gratifying that Lord Chief Justice Coleridge and his associates should be our guests at the dinner on Friday night. To accomplish that requires more than the simple sending of an invitation to be present; and it has occurred to me, though I do not feel as if I were yet ready to formulate the proposition, that the appointment of some committee, who should, before the dinner, visit New York, or at least send their message, would be the right way to do it. I would suggest that this matter lay over till to-morrow morning, when it can be put in the proper form.

E. F. Bullard, of New York, said:

I would venture to suggest that this subject be referred to the Executive Committee. The gentlemen in question are not expected to arrive before Friday, by which time arrangements can be made for prompt telegraphic com-

munication, should the steamship arrive. It may be very proper for the Executive Committee to secure some appropriate action for the Association. I therefore move as a substitute, that the resolution be referred to the Executive Committee, with power to act.

The substitute was accepted.

Edward Otis Hinkley, the Secretary, said that the Executive Committee had already had the matter under consideration, and had sent a formal invitation to Lord Coleridge to attend this meeting, some time ago.

The resolution was adopted.

Robert G. Street, of Texas, then read a paper on "How far Considerations of Public Policy may enter into Judicial Decisions." (*See Appendix.*)

Seymour D. Thompson, of Missouri, read a paper on "The Abuses of the Writ of Habeas Corpus." (*See Appendix.*)

After a brief discussion as to the announcement of a discussion upon the subjects suggested by the papers read, and as to the propriety of so doing that evening, it was moved and adopted that the discussion be postponed to the next day's session at ten o'clock.

Thursday, August 23, 1883.

The meeting was called to order by the President, at ten o'clock A. M.

The President said:

According to the programme prepared, the first business in order this morning is the reading of the paper by Mr.

Shirley. I will announce now, in order that it may be understood, unless the Association otherwise direct, that the next business in order, after the reading of Mr. Shirley's paper, will be the discussion of the papers read yesterday, as well as that to be read this morning.

Edward Otis Hinkley said:

It has been usual to make a special announcement of the names of the delegates of the state Bar Association who are present. They are as follows:

Alabama, George F. Moore.

Tennessee, John M. Gaut and R. D. Frayser.

Missouri, John L. Thomas and Gardiner Lathrop.

John M. Shirley, of New Hampshire, then read a paper on "The Future of our Profession." (*See Appendix.*)

Judge Poland presented, by instruction of the General Council, several names for membership.

(*See List of Members Elected.*)

The President said:

Discussion is now in order upon the various papers that have been read.

Richard Vaux, of Pennsylvania, said:

The Philadelphia Law Association, last winter, took up the consideration of the proposed acts of Congress relieving the pressure of business in the federal courts of the United States. That subject was referred to a committee. It spent a very long time in the consideration of the subject, and made a report, which was adopted by the Association; whereupon the Law Association passed a resolution directing the committee to lay this report before the Bar Association of the United States. I ask permission to present the report, together with a resolution. I now move that these papers be laid on the table.

There being no objections, it was so ordered.

E. F. Bullard, of New York:

I move that Mr. Vaux's report be now read for information.

Mr. Vaux:

I offer no resolution now for the consideration of the Association. I state that the accompanying report, presented to the Law Association of Philadelphia, was adopted by it; and the Association thereupon instructed the committee to take the necessary steps to bring its report before the American Bar Association, at its Annual Meeting at Saratoga.

Mr. Bullard: I would like to hear it read.

Mr. Vaux: It would take too much time now.

Mr. Vaux's resolution was adopted.

William P. Wells, of Michigan:

It seems to me that a very important and interesting portion of the admirable paper by Mr. Shirley, which has just been read, was that which related to the dispatch of business by the tribunals of last resort. I think members of the Bar from every state can speak feelingly upon this subject. It is no disparagement of, or criticism upon, the tribunals to say that the increase of business, which imposes upon them the duty of deciding so many cases, renders it almost an impossibility for them to dispose of business with a due regard to the rights of suitors and the established principles of law. Notwithstanding this, it cannot be forgotten that the courts exist that causes may be tried; and that causes cannot be properly adjudged unless they are properly heard and considered. Now, there are two consequences which result from this disposition of judges to hasten the disposal of business on the docket.

In the first place, its effect upon the rights of parties interested is injurious; in the second place, not only tribunals lose sight of the principles of decision, as the great object which they are to keep before them, but they are led to indulge a disposition to abridge oral argument.

There are states, within my own knowledge, where judges have exhibited marked anxiety to have suitors submit their causes upon printed briefs only; and as to such judges, the truth is, as suggested by Mr. Shirley, that they have not time to read the papers when so submitted.

The consequence of this is that when the case comes to be considered by the court, no oral argument has been heard, and often the printed brief is not read. Thus it has come to pass that many courts have forgotten that the profession of advocacy exists in order that parties drawn into litigation may be heard in court through their counsel. For my part, I shall be very glad to have Mr. Shirley's paper printed, and our Secretary should take the liberty of sending it with marked passages to the chief justice of every state in this Union. There is one notable exception in this respect; that is, the Supreme Court of the United States. Notwithstanding that the court is overburdened; notwithstanding that it is constantly pressed by the popular sentiment of the country, it is to the honor of that court that it listens patiently, that it disposes of causes with deliberation, and that it takes the responsibility of a long time to consider the causes, after a hearing in which full and patient consideration is given to the arguments of counsel. Who that has stood in that presence can ever forget the gracious and benignant patience of hearing exhibited by such judges as Taney and Nelson and Curtis, and others who might be named!—that patience of hearing which Lord Bacon commends as among the highest qualities of a good judge.

This is a subject to be emphasized by this Association. I can see but one issue of this over-burdening of the dockets of states: these periodical obstructions must be relieved by the establishment of temporary commissions. Then there is a problem in respect to constituted tribunals, such as the Supreme Court of the United States, which cannot be disposed of upon any hasty consideration. I conclude as I began, by saying that that portion of the address of Mr. Shirley ought to receive the hearty appreciation of this Association.

In reference to the paper read by Robert G. Street, of Texas, on "How far Considerations of Public Policy may enter into Judicial Decisions,"

Charles C. Bonney, of Illinois, said:

Believing, as I do, that the doctrine of Judicial Supremacy is the rock on which constitutional government rests, a sense of duty constrains me to protest against any attempt, in a body of which I am a member, to impair that foundation-stone of the superb superstructure that rests upon it. Let me therefore devote the few moments allowed by the rules of the Association, to an examination of the nature and extent of the judicial power, and of what I conceive to be the fundamental error of the learned essayist's position. It is one of the charms of our profession that we are trained to distinguish between men and principles, and with only the kindest feelings towards the man, wage the most vigorous opposition to the measure he supports. I, therefore, with great pleasure, pay the tribute of my admiration for the learning and ability displayed in the paper under consideration, while I dissent *in toto* from the conclusions reached.

I think we will all agree that the application of the law to a state of facts, for the determination of a controversy, is a

pure judicial function; and that it is indispensable to the proper exercise of that function, that the court shall examine the law, and also the contract, if the proceeding rest upon an agreement, in order to ascertain and declare their meaning. Hence the construction and interpretation of laws and documents, and the definition of their terms and meaning, is strictly and wholly within the judicial province, and inheres in the very nature of the judicial power. Let us now take another step. All the judicial powers are granted to, and wholly vested in the one Supreme Court, and such courts inferior thereto as the Congress may establish. No such powers are reserved, no exception is made; hence we must conclude that no power of final construction, interpretation, and definition has been given to the executive and legislative departments. That power, so wholly conferred upon the judiciary, must be exercised by them for all departments and agencies of the government. Executive and political officers may, in the first instance—and, indeed, must—form opinions of their powers and duties in relation to the matters upon which they are called to act; but they have no jurisdiction and authority finally to determine the extent and limits of their powers under the Constitution. The supreme and final authority so to decide is vested in the courts, and, when exercised, binds all the agencies of the government. The President and Congress are bound by their official oaths to support and uphold the Constitution of the United States. What that Constitution requires can be conclusively determined only by the judicial tribunals. If this were not the law, we should have the strange spectacle of the purse and the sword determining for themselves the extent of their obligations and their powers. What patriotic executive or legislator would wish it so? Who would not rather desire to have some disinterested and impartial arbiter discharge that solemn responsibility?

The theory of co-ordinate departments of government is well enough in its proper place; but it gives no just warrant for the claim that any department can properly exercise any power committed to another—which is the precise point under discussion—the exposition of the Constitution and of statutes enacted under it being judicial in its very nature, and granted, with all other judicial powers, to the courts by the express terms of the Constitution.

But, for greater certainty, let us inquire what is the nature of legislative authority. It did not create human society, nor did it make the fundamental rules of jurisprudence. Both existed before the legislative department of government was organized. Few of the rules that regulate human conduct were framed by the legislative hands. The great body of them were evolved from the experience of mankind, in the progress and development of civilization. Some have been added, and many modified by legislative enactment.

The exercise of pure political power is the chief duty of legislative bodies. This includes municipal corporations, elections, revenues, and appropriations. But they have also the power to establish new rules for future cases. They have not the authority to declare what the law is. That is a judicial function. We are apt to forget how small a part of the whole body of existing law we owe to legislation. Let a single illustration suffice. I heard a learned judge say of his court, that if the legislature should repeal every statute regulating its proceedings, he could nevertheless go on, under the constitutional grant of jurisdiction and the practice of the common law, and administer complete justice in all cases within the grant of the Constitution.

Deriving our jurisprudence largely from the mother country, we sometimes overlook differences which are fundamental. The doctrine of parliamentary omnipotence is radically different from the American principle of separate and distinct

departments of power. The British Parliament may, it is claimed, change the succession of the crown, and by its House of Lords it exercises the judicial authority of last resort. But under the American system, the legislative, executive, and judicial departments of power are separated by fixed and permanent barriers, that cannot be passed without usurpation. The American Constitution is a new thing in practical government. Its unity and integrity are maintained by the judicial supremacy it creates, and cannot otherwise be perpetuated.

We are apt to overlook the inherent powers of the judiciary, and to forget that "the court of equity is a fountain of remedies;" and that while it has no authority to create new rights, it has jurisdiction to recognize and enforce all that are regarded as such, and, in language ancient and eloquent, "will not suffer a right to be without a remedy."

The fundamental principle of our government is that the people, by their constituted agencies, may make what constitutions and laws they will; but that, having made them, the people must obey them while they stand. *Thus the law is sovereign.* No majority may rightfully disregard it. A child may invoke its protection against a multitude. The liberty of constitutional government is not the liberty to obey or disobey the laws according to personal or official pleasure or opinion; but it is the freedom to participate in making them; to act within the established limits; to change them in legitimate ways; and to enjoy the exercise of thought and conscience, unrestrained by human authority.

Two radically different views of the judicial department of the government are presented. One regards the courts as created to settle controversies between individuals, and as practically excluded from participation in public affairs; the other deems the establishment of a supreme judicial authority, exalted above the control of political agencies, as the

crowning excellence of our system, without which it could not long endure, but with which it may contemplate the coming centuries without fear.

It is rather to the natural growth and development of jurisprudence, than to the legislative authority, that we should look for the new rules that new emergencies may require. The doctrine of judicial evolution is fundamental to the common law, as well as firmly established by modern decision. It is one of the boasted excellencies of the common law, that it adapts itself by needful changes and enlargements to new conditions as they arise; and I do not hesitate to declare that it is the fault of the courts, if needless technicalities are retained after the reason for which they were invented has ceased to exist. The doctrine of judicial evolution is clearly recognized by the Supreme Court of the United States, in holding that the power "to regulate commerce" extends to the telegraph and other agencies not dreamed of when the Constitution was formed. The learned essayist referred to Jefferson's dogma that words are to be understood in the sense they bore when they were used. But thus stated, this rule is a heresy, as well as a dogma, for it states but half a truth. The Constitution was made, not for the present, but for all the future, whether near or remote. If the illustrious men who formed it had been asked the question, they would have declared with one voice that they were building for a great posterity, and that the words they used were intended to expand with the growth and development of the country, and to meet new conditions and emergencies as they might occur. This is judicial evolution. Amendments to the Constitution, and new statutes have, indeed, been required, to repeal provisions no longer needed, and to confer new rights and privileges. Such improvements are within the legislative domain; for, as I have already said, the courts have no power to confer new rights and privileges.

Their authority is limited to the protection and enforcement of such as exist.

We have listened to severe censures of judge-made law and judicial legislation. What is the meaning of these terms? Judge-made law consists of judicial expositions of the various doctrines of jurisprudence as found in, and illustrated by adjudged cases. Of this there is fortunately very much. Judicial legislation consists of arbitrary rules, not existing in the nature of the relations involved, but asserted and applied by the court without warrant of principle or of law. Of this there is fortunately very little. Of judge-made law, the text-books on commercial law, the law of contracts, the law of common carriers, the law of evidence, and, without enumerating other branches, the jurisprudence, pleadings, and practice of equity, largely consist. We owe little in all these departments to legislative enactment. They are the result of the evolution and development of the law under judicial exposition. This is even more true of constitutional law. The human intellect has never reared a nobler edifice than the American system of constitutional jurisprudence. It has risen under the hands of its master-builders, with a harmony, strength, and beauty as fascinating to the lawyer and the judge as is the matchless Cathedral of Milan to the eye of an architect or a poet. But other subjects press for time and hearing, and I must close. If I have spoken earnestly, it is because my words have come from my heart, and because I believe that the question to which I speak is vital to the best interests of this country. I close with a repetition of the noble tribute of the President's Address to that greatest expounder of the Constitution, John Marshall. We cannot match his judicial expositions of the great powers of government, by any chapter of legislative achievement. The only legislative act worthy to stand in "fame's proud temple" side by side with those expositions, is the famous

ordinance of 1789. Distinguished by a far-reaching and almost superhuman sagacity, that act of legislation deserves to rank with the Declaration of Independence and the national Constitution.

For the reasons thus briefly given, I must dissent from the argument of our learned brother, that the legislative and executive departments of the government have the right to determine for themselves the extent of their powers and duties under the Constitution, and must hold that those departments are, and of right ought to be, bound and concluded by the judgments of the judiciary on all questions of constitutional authority.

Let us encourage, rather than retard, the work of judicial evolution. Let us acknowledge and honor, rather than decry and seek to remove, that golden crown of constitutional government, JUDICIAL SUPREMACY.

E. F. Bullard, of New York, said :

To-day we have upon our statute-books in this state, a law which allows a man worth a million dollars in personal property, at his death, to deprive his family, by will, of every dollar; and there is no power in the courts to compel his estate to support the widow, except for a paltry sum of a few thousand dollars. Great reforms, such as are here needed, are only made by the people. Our written constitutions restrain the legislative power within certain limits, and to that extent the legislature is bound. If they transcend those limits, of course the Supreme Court of the state or of the United States, passing upon those acts, properly and legally nullify them. Therefore it seems to me both parties are in one sense right, and yet both parties wrong. I cannot admit but that the courts must necessarily become evolutionized to some extent. They must follow the will of the people, so far as requires their construction to follow public senti-

ment. The Circuit Court of course makes its final decision and nullifies a law. We cannot help ourselves except by revolution or impeachment, and that court may go so far in sustaining monopolies and corporations as to call upon its head the anger of the people through its representatives in Congress. In the case of Kilbourn, where Congress claimed to have the right to examine him for the purpose of burrowing out corruption, by a unanimous vote, he was imprisoned for refusing to act as that body had directed; yet the Supreme Court, by a majority vote, decided that Congress had no power to imprison a man for refusing to speak and unfold corruption. If Congress had asserted its dignity, it would have said to the Supreme Court, "We are supreme on that question," and the Supreme Court would have had to yield.

N. W. Ladd, of Massachusetts:

Mr. President,—It is not alone through the legislative branch of the government that the people are able to express their will. They can also speak through the Constitution of the United States and the constitutions of the several states. There are those two ways in which they can make themselves heard, and in which they can have a voice in the conduct of their government. Therefore it is true that the people are supreme. All the forms of government, all the departments of the government, are subject to their control. I agree in the main with the gentleman from Illinois on this question. It is true that the courts are to interpret the law; they are to interpret the Constitution; they are to say what the law really is; but they are in no sense to make the law. And it is true that we should go to the discussion in the enacting of any law or the adoption of any constitutional provision which the courts are called upon to interpret, to find out what was really

intended. I do not understand the gentleman from Illinois as controverting that position in the least. He distinctly said that if the founders of our Constitution had been asked whether they wanted to institute a system which should govern a growing country, or to introduce a system which should be narrow and contracted, they would unanimously decide for the former.

And, Mr. President, it is one of the rules of interpretation well known to all courts of justice, that the purpose of the instrument which is being construed is not to be forgotten. We are to consider that purpose, and I take it upon myself to say that that is one of the most important rules of interpretation, and one which, I think, may well govern all other rules of interpretation. What was the purpose of that instrument which was in the minds of the framers of our Constitution, and which is in the mind of the framer of every constitution throughout our country, and in the minds of the members of every convention which is called to make amendments to those constitutions? The thing that is in their minds is, What shall be the future of this country and of the state for which they are legislating? And that is the rule, it seems to me, which is to prevail in the interpretation of our Constitution; and that, as I understand the gentleman from Illinois, is his meaning. They were legislating for this broad country, destined to be filled by millions of people, and I trust that they had minds which were capable of comprehending that situation.

Robert G. Street, of Texas:

The gentleman from Illinois has entered his "protest" against the views presented in the thesis I had the honor to submit yesterday; and, while not proposing myself, unless there should be further occasion, to engage in ex-

tended argument to sustain those views, I wish to return my sincere thanks for the fair and kindly spirit which distinguished his remarks. It shows upon his part an appreciation of the spirit in which the article was framed: one of philosophical inquiry after the truth of a great question. The first sentence of the gentleman indicates the fundamental difference that exists between our views. It was, "My belief in judicial supremacy constrains me to protest against the views," etc. In response to that—and these two expressions will outline all the difference that exists between us—I say that my belief in the co-ordination of the three departments, the executive, legislative, and judicial—that they are equal and independent of each other—constrains me to the views expressed in the paper I have read.

We each, no doubt, enjoy the felicity of believing that our respective views are those which, under the Constitution, will best "promote the general welfare and secure the blessings of liberty to ourselves and our posterity."

It seems to me, Mr. President, that while the gentleman has eloquently dwelt upon the evolution of the law as productive of all that is beneficial in it, that it is to my side of this discussion that that argument belongs. I have proposed, sir, an argument against building up, by judicial decision, a Chinese wall against the progress of this country in the development of the science of republican government. It is I who say that the constitutional power of Congress, in the selection of "appropriate means" to carry out vested powers, is elastic and expansive, and that the interpretation that is placed upon what constitutes "appropriate means" by a single department of the government—and that the one which, from the nature of the question, knows less about it than either of the others—ought not to preclude us, but that this power should be subject to those

methods of construction which alone would enable us to adapt its exercise to changed conditions and circumstances. And this I understand to be evolution, if not in law, in political science. It is the very basis of my argument. I think the paper will serve, perhaps, some useful purpose, and the views of the gentleman will appear in juxtaposition with my own. The article is not submitted as an elaborate exposition, but as a suggestion, fortified by some authority and some reason, and because I thought that these were things that ought not to be allowed to perish in the land.

Edward Otis Hinkley, of Maryland:

I will add a word or two to what Mr. Street has said in defense of the general principles that I understood to have been advocated in his paper. When Roger B. Taney, in the city of Baltimore, tried the *habeas corpus* case of Merryman, and sent to the marshal at Fort McHenry to have the man before him, that justice might be done by the judiciary, the marshal returned for answer that he was prevented by the military force of the United States government from bringing him into court. Thereupon Taney delivered his opinion,* which is in print, and I will say nothing about it, but I remember to have heard his remark: "I will report the matter to the President." We all know that the writ of *habeas corpus* was suspended by the executive. In the opinion of Taney, it was the legislative department that had the exclusive power to suspend the operation of that writ. In times of war, the laws are silent.

It is impossible to tell what a man of power and determination will do in a case which he deems a case of necessity. What Andrew Jackson would have done under certain emer-

* See *Hurd on Habeas Corpus*, 2d ed., 119; 9 *American Law Reg.* 705.

gencies, he gave very vigorous evidences of. What other men have done in the office of President, we have seen. Our history shows it. The executive, then, will sometimes override the judiciary. Why? Because of some necessity which is apparent. Now let us turn to one of the principles of the common law. If a man goes out of the beaten road upon another man's land adjoining, without necessity, it is a trespass; but if the road is so obstructed that he cannot go upon it, he may have a way of necessity around it; the trespass is permitted as of necessity. If a man's house is burning, and there is danger that the conflagration may extend beyond his own property, certain necessities of the fire department allow them to go in and tear the house down. There are extraordinary occasions which justify the executive power in overriding all law. Now, lawyer though I be, and disposed to deprecate all that sort of thing, I once took hold of a man, by request of his mother, and prevented him from killing himself. Was that a trespass? Could I be sued for trespass against the person? I think not. Any jury would have acquitted me. That is the principle which is involved so far as the executive is concerned. Now, so far as the judiciary is concerned, they are bound to say whether the legislature has done right or wrong. Then the legislature are bound to obey, if they can see and understand it. But in a conflict between the judiciary and the legislative department, there is no appeal except, as Thomas Jefferson said, "to the people." And that is the ultimate appeal whenever the three departments are arrayed against each other. The truth is, there must be some balancing, some giving and yielding. In the friendship of two men, we will find that there must be a little accommodation between them, so as to avoid trespassing upon questions that are too difficult or delicate. It has been said that the quarrels of lovers are the renewals of love. Well, then, there must be some attempt. How can you find the

strength of a rope until you ascertain by certain ways how much strain it will bear? So the strength of an organization depends upon such questions as that. The question comes back again as to which of the three is right, and the question is one of impossibility of solution, just as is that peculiar problem in mathematics, What is the result when an irresistible force comes in contact with an immovable body? The consequences are, it is said, inevitable. You come down to the people, and they will answer you the question which is right. The truth is, that there are two great principles governing us all, and if we have regard to them, they will ultimately solve them. The good of the people is the supreme law. Then the question is whether, the heart being right, the head is right. We want integrity and ability. Very well. Now, you may use any amount of force or expression of will, and it will not accomplish anything until the man's reason is attacked; and then he will quietly submit, as he will to an axiom in mathematics. When the result comes, and it is done in a regular, orderly, reasonable method, then we stand and submit. I therefore agree with the gentleman from Texas, that there are some occasions when the conflicts between the three great departments are not to be solved in any other way than that each one must do what it thinks right; then if they disagree, the people will settle their quarrel.

Stevenson Burke, of Ohio:

Mr. President,—I quite agree with the gentleman from Illinois, and I disagree entirely with the proposition here advocated by some gentlemen, that each department of our government may construe the Constitution conclusively for itself. In my judgment, a careful reading of the Constitution will make the matter in dispute very plain.

We should bear in mind that governments existed long before our Constitution. Courts, legislatures, and execu-

tives all preceded it. The framers of the Constitution, recognizing the three great departments of government—the executive, legislative, and judicial—provided in the Constitution that the executive power should be vested in a president; that the judicial power should be vested in one Supreme Court and in such inferior courts as Congress should from time to time establish; and that the legislative power should be vested in a Senate and House of Representatives.

The people, in adopting the Constitution as the supreme law of the land, did not undertake to create any new powers; they simply provided where each power should reside. Now, let me ask you, as lawyers, what, in all times past, constituted the legislative power? Was it anything else except the power to make laws? In countries not governed by a constitution, the legislative power undoubtedly is supreme; in countries like ours, governed by a constitution, which is the supreme law of the land, the legislative power is unquestionably limited by the constitution.

The Constitution provides that the judicial power shall be vested in one Supreme Court, etc. What is the judicial power of any country—of any constitutional government? Can there be any doubt that it involves the power to ascertain and determine not only the rights of parties in any given case properly brought before it, but that it has also the power in any case involving the constitutionality of any law, to decide the question of its constitutionality? Can there be any doubt that the judiciary under our Constitution has the lawful authority to say whether a law enacted by the legislature conflicts with that Constitution? The people established the Constitution, and declared that it should be the supreme law of the land. The courts are sworn to support the Constitution; and if an act of the legislature is found to conflict with the Constitution, can

there be anything clearer than that it is the duty of the court so to declare? The people established, by the Constitution, the different departments of government, and divided and limited their powers; and, in my judgment, the Constitution thus adopted, conferred upon the courts the power, in any case properly brought before it, to determine whether any particular enactment of the legislature is or is not constitutional. This power, in my judgment, inheres in the courts from the very nature of the powers that are to be exercised by the courts. It belongs to our courts, not because it is a new power, but because the judicial power under our Constitution establishes the courts therein provided for, especially the Supreme Court, as the final and ultimate tribunal to determine what is and what is not in accordance with the Constitution.

I rise to make these observations, as I do not like to have it go out to the world as the opinion of this distinguished body, that each department of our government has the same power to judge for itself of the constitutionality of a statute. In my judgment, each of the departments of the government, within the powers conferred upon it, is supreme; that is, the legislature has the sole power to make a law, the executive power to execute it, but the courts established by the Constitution are of necessity the final arbiters as to whether, in any given case, either the legislative or executive departments have transcended the limits of the Constitution.

Charles S. Bradley, of Rhode Island:

After listening to the gentleman from Ohio, it seems to me that I need only say, "Ditto to Mr. Burke." And yet I may add a word of concurrence. This Association will, I trust, always be liberal to the last degree to all declarations of new opinions and hopes. We shall welcome the light on

the mountain tops, of the coming day. There are those whose thought is direct and rapid like the cannon ball. Others prefer the river's course, the valley's windings, the road on which blessings come and go, if I may quote a poet, one of whose blood and lineage is now landing on our shores—the Lord Chief Justice of England.

While the thoughts of our younger brethren shall be placed upon the records and sent forth to the country, it is due to this Association, it is due to the bar of the country, when such thoughts are thus given to the world, that with them shall go the doubts, the dissent, it may be, of the seniors of the bar, those who live in the valleys or on the plains. We must be permitted at least to say that we do not understand you, young men, and cannot therefore agree with you.

The paper before the Association seems to present the idea that in our American system of government there are three branches, each co-equal in authority, in right, and in power. If one branch declares any right, another branch may deny the existence of that right, and each branch rightfully act upon its own convictions and declarations. The executive department may affirm a right and act upon it; the legislative department may affirm a right and embody it in law; the judiciary may deny either proposition; and the opinion of neither shall control the action of the other. Such is the result of the proposition.

Now, government is essentially a practical matter. Let us look at the theory advanced, from a practical point of view. To take an illustration which occurs to me, Congress once passed a law taxing the salaries of state judges. The Supreme Court declared such law to be unconstitutional and void. Now, should the officers of the executive collect this tax, and the marshal of the United States court protect the incumbent of the state office from such collection? Can

the officers of one and the same government be engaged in such a direct conflict of duties? What would become of the highest officer, it may be, of a state court between such antagonisms? One department certainly must yield to the other. They cannot be co-equal practically, and remain a government. Chaos would reign.

The common sense of the American people has acted upon the idea that, in such cases, the judicial is paramount to the executive or the legislative department. It is such common sense in the affairs of government which has carried us through a hundred years of successful experiment—through even the Niagara of civil war. By this common sense we now float tranquilly on the waters of Ontario, as before on those of the upper lakes. By it we shall go through rapids without danger, to the ocean of the future.

Co-ordinate, indeed, are the branches of government; they cannot be co-equal at the same time and place. Such human creations must be like those creations of God above us and around us, whose movements are the harmony of the universe, each in its sphere, each obedient and sovereign by turns, and never in collision.

We have instanced one case of many in which the judicial power must be supreme. There is a large class of cases in which the legislative department is supreme over the judicial. The able writer of the thesis, representing with such interest to us all the really empire state, whose emblem is still the lone star, will permit me to refer to an instance illustrating this doctrine in the history of the smallest state, save one, in the Union—a history, I may be permitted to say, which has been so instructive in matters civil and religious, that one of her sons happily compared her to the statue of the Greek sculptor which, though but a cubit in height, gave a better idea of vigor than the Colossus. In this

comparison I certainly do not mean to say that Texas is the Colossus.

It happened in the history of this little state that two governments claimed the allegiance of its citizens. The government *de facto* placed on trial before its courts Thomas Wilson Dorr, claiming to be governor *de jure*. The prisoner at the bar offered evidence of certain facts, claiming that they in law constituted him the governor of the state, with the right to commit the acts for which he was arraigned.

The court held that such inquiries were not cognizable by it. The decision of such questions was vested in the political department of the government. The court would not revise or reverse the action of the political department in this regard. It was its duty simply to follow and obey; any other course would be a usurpation. Such was the doctrine of the supreme court of that state, propounded in such terms by its philosophic chief justice, that Mr. Webster embodied them in full in his argument of the case, *Luther vs. Borden*—an argument preserved for posterity in the last precious volume of his works, dedicated by him to the memory of his beloved daughter and of his youngest son, who gave his life to his country in the war with Mexico. The Supreme Court of the United States, composed principally of judges of a different school of political thought from Mr. Webster, without dissent sustained the doctrine; and it has recently been acted upon by that tribunal in a case arising upon the reconstructed constitution of Georgia.

There is a class of cases in which the danger apprehended by the author of the paper exists. It is those in which the court is called upon to give opinions to the other branches of the government. Such opinions are not in the exercise of its judicial functions. They are not opinions given after listening to antagonistic discussions. What constitutes the worth of judicial decisions, what makes them in experience

the just and safe basis upon which society rests, is not only that the court fulfills its oath of office in judging uprightly and impartially, but also that it speaks judicially only after it has been instructed by argument upon different sides of the question before it. No other opinions from it have the force, the weight, or the wisdom of law. To attempt thus to introduce the personal opinions of the judges into our system of government, is to give them an unnatural, a dangerous potency.

There is another class of cases in which the judicial and the political branches of the government have approached collision: those in which constitutional changes have been attempted either through the provisions for amendment contained in existing constitutions, or through conventions assembled with the consent of the existing government.

The most remarkable instance, perhaps, which has occurred, is that of Pennsylvania. When the last convention was held in that state, the court judicially declared that the mode of submitting the proposed constitution to the people must be that pointed out in the law providing for a convention. The convention almost unanimously protested against this decision of the court, but prudently yielded to its directions.

Such questions must be considered yet in abeyance. And so of others in which the courts—notably recently in Iowa—have held that the mode and the particulars through which an amendment pursuant to the Constitution can be made, must be strictly complied with, or the amendment, though proposed by the legislature and adopted by the people, is void.

It may well be a subject of consideration whether, in such action, the judicial has not encroached on the political department, or assumed a power over the sovereign—the people themselves.

In no government in the world has such power been vested in the judicial department as in ours. It is, like all power, especially when new and untried, liable to abuse. It has been abused.

It is also true that the decision of a court does not close discussion, even in that forum. Witness the jurisdiction over corporations, and the admiralty jurisdiction of the United States courts, and the decisions on the legal tender acts.

Still less does a judicial decision close discussion in the legislative bodies and before the people. The judiciary is like a dam, which holds back public action for a time, but for a time only. The great current of human life and thought is paramount to it, and must sooner or later have its course.

With these and such concessions to the thought of the writer, we must still maintain that rightfully at times, and often, the judicial department is supreme.

George A. Mercer, of Georgia:

I wish to impart a piece of information. The question discussed by the gentleman from Texas is interesting, as this discussion has proved, and the present constitution of Georgia very happily cuts the knot. It has a clause which provides that every law passed by the legislature not in conformity with the supreme law, is null and void, and the judiciary shall so declare. So that in the state of Georgia there can be no question at all as to the power of the judiciary to declare a law void. Still, Mr. President, the question elicited by the essay of the gentleman from Texas is a very interesting one to us. For example, if a law were passed by a legislative body, and a supreme tribunal decided that that law was unconstitutional; if that same law should go before the Executive for interpretation, would he be bound to say that it

was void because the Supreme Court had so declared? I think not. He would be under a moral obligation to say the opposite. It seems to me that the question is properly summed up in what Judge Bradley says. If the law were vetoed because the court said so, then the illustration given by the essayist last night could not follow. Take the Legal Tender Act. The Supreme Court decided that that act was void. The act continued in operation. The Supreme Court subsequently decided that that act was not void. If the act was annulled completely, and destroyed by the first decision, then the second decision could not have acted upon it. It seems to me that the question can be very well illustrated by a famous Irish bull. Two Irishmen were standing beside a well. One fell in. The other looked down in the well and called, "Patrick, are ye dead?" "No," said Patrick, "I'm not dead, but I'm speechless!" Now, the law may not be dead, but practically it is so.

Emory A. Storrs, of Illinois:

When I came into this hall I was attracted by some observations upon what, it seems to me, is a present and very serious fault in our judicial administration; and if I were to characterize it by a phrase, I would call it "judicial hurry." There is a growing tendency, particularly in large cities, to introduce in the administration of justice the questionable methods of the stock board and the produce exchange. I am opposed to that kind of hurry, and I am in favor of any address (and I understand that a very able one has been read before this Association) which aims to prevent such practices. I admire our profession; I honor and respect the bench; but I should honor and respect it much less than I now do if that honor and that respect was a mere fetish worship of the bench because of its position. I cannot but remember that all the judges have been

lawyers, and most judges again become lawyers. I cannot but remember that throughout this country there are a great many judges who would be highly complimented by the suggestion that they were or had been lawyers. I do not believe in hurry, for I think nothing is secured by it. Nothing is gained by doing a great deal of injustice in a few minutes, and no time is too long which is appropriated to the correct decision of a case. The most admirable judicial tribunal, I take it, that we have in this country is the Supreme Court of the United States.

This leads me to the topic I have suggested—the fetish worship of the bench. The bench has not made as many things as we sometimes think. It is not a creator; it ought not to be. Lord Mansfield did not make the law merchant; the merchants made it before he did. Just what this system of equity jurisprudence is in this country, I hardly understand. It is a curious piece of mosaic, and in this state I believe there is no Equity under that name. Without going very deeply into this subject of the origin of the social system, nor trenching at all upon these vexed questions which grow out of the different relations of our government, I think there are practical questions, every day presenting themselves to lawyers, which I know we have to meet, and which I know the bench will have to meet. I am more or less suspicious of metaphysical terms imported into our profession. I do not know quite what is meant by “judicial evolution” or “judicial development.” It is a sort of legal protoplasm with which I am not familiar. Judicial legislation—and with all my approbation of the bench throughout the country, there is a great deal of it—is, in my mind, much worse than legislative legislation. I do not believe that we ought to try to veneer that practice by the convenient phrases of “judicial evolution” or “judicial development.” Of course, the common law is wonderfully

growing and elastic. Had we not better, on these tremendous questions, such as are constantly presenting themselves, growing out of the disturbed relations between corporations and the public interests, take the situation exactly as we find it, and admit that, in the common law of which Coke and Bacon wrote, there was nothing really adequate to reach the questions which we are every day compelled to confront, and which, in one way or another, the courts are called upon to decide? I believe in this division of power, and, believing in that, I am quite as reluctant and averse to a judge legislating as I am to a legislator adjudicating. It is a little hard to tell on which side of the line the balance of the danger lies. Let us, as lawyers, also remember another thing. Our profession is an old and long one, and we cannot quite judge judges by any little period of a generation or of a century. Take the whole history of civil liberty in this country and in Great Britain together; the lawyers have done a great deal for its advancement, and in the main the judges but very little. I think it may be said with absolute truthfulness that, taking the whole history of the common law together, and of the judges under that system, the judges have inflicted more serious injuries upon civil liberty than generals. The judges never gave us the liberty of the press, or of speech, or of the pen. The lawyers did fight for it, and in the main it was lawyers, aided by legislators, who secured it. It has been so in the history of this world with all these great questions. Gentlemen, it is going to be so in the history of our own country, and in our own immediate time. It seems to me hardly necessary to theorize or philosophize much about it. The Dartmouth College case is practically reversed. I express no opinion as to whether it ought to have been or not, but the Dartmouth College case, with its declaration of vested rights, etc., and in the way in which it

was applied, became, upon this people, a burden so serious, that I think it was pretty clearly seen that there must be either a limitation, an explanation, or a qualification of the Dartmouth College case, or a revolution. It is not fair, therefore, to say that the Dartmouth College case has not been qualified. It has. It is well enough to say that the decisions of the Supreme Court are absolute law, without intending to urge any political considerations whatsoever.

The Dred Scott case was reversed. Who reversed it? Decisions have been reversed again and again. No theories of evolution can draw us away from those facts. We, as lawyers, stand upon the threshold of an important era. We cannot, by any theories that we have now, or may invent, change the stride of these great affairs. In those mighty questions, partly political and partly professional, the people of this country are going to have their way, and I think it would be well for us, seeing in advance that they are determined to have their way, to take pains and get into line, and let their way be our way also.

The President :

If this discussion is not to be prolonged, the Chair is prepared for any other business that may be introduced before the adjournment of the morning session.

C. C. Bonney, of Illinois :

Mr. President,—I rise to move—and, in case my motion shall be seconded, to ask that it lie on the table—that the next meeting of this Association be held in the city of Chicago.

The President :

There being no objection, the motion will be received, and lie on the table without action.

Emory A. Storrs, of Illinois:

I rise to announce the death of a distinguished gentleman, the Hon. Thomas Hoyne, of Chicago, a member of this Association.

The Secretary:

Appropriate action will be taken upon Mr. Hoyne's death, and an obituary notice will be printed in the record of our proceedings.

William Allen Butler, of New York:

I ask leave to present, very briefly and verbally, the report of the Committee on Jurisprudence and Law Reform. The committee was directed by the Association at its last meeting to take suitable action with reference to the presentation to the different state legislatures of the act relating to acknowledgments of instruments affecting the title to real estate, and to prevent fraudulent divorces. The committee, pursuant to that direction, have caused these acts to be presented to the different state legislatures. Owing to the fact, of which the Association is well aware, that in many of the states, sessions of the legislatures are only held once in two years or three, many of the legislatures have not acted upon these proposed statutes. The state of Minnesota has passed the act in relation to fraudulent divorce. Missouri has passed the act relating to the acknowledgment of deeds relating to real estate. These acts are pending before all the state legislatures. We are therefore able thus briefly to report progress upon this matter, and I particularly desire, on behalf of the committee, to suggest to members of the Association present, that if any of them can aid us in any way in furthering the passage of these acts, we should be very thankful, and the Association will recognize the value of such assistance and service. The reports we have received are all favorable

in respect to the act regarding acknowledgments. If there are any gentlemen present who can communicate with the committee, and can aid us in furthering the passage of these statutes in their respective states, we shall be very much obliged to them if they will communicate with us.

On motion, the meeting then adjourned.

Evening Session, August 23, 1883.

The President :

I take this occasion to announce to the Association the reason why Governor Stevenson could not deliver his Address this morning. I have a telegram from him which I received on Monday evening. I did not make the announcement before, because I was in hopes the reply which I made to it would have brought the manuscript of his Address. This telegram says: "Sick, and quite a sufferer. Sadly disappointed at not reaching Saratoga. My Address was all prepared. Explain my absence." I telegraphed in reply, expressing great regret, and requesting him to send on the manuscript as promptly as possible. To that I have no reply, nor have I heard anything of the manuscript arriving. I had hoped that by this time it would have arrived, and therefore I delayed making this announcement until this hour.

Edward J. Phelps, of Vermont:

I desire to offer a resolution on the subject you have just mentioned, which I think will probably command unanimous attention. It is as follows:

Resolved, That the Association have heard with deep and sincere regret of the illness of our honored associate and dear friend, the Hon. John W. Stevenson, which detains him from

this meeting, and deprives us of the pleasure of his promised Address.

Resolved, That the Secretary be requested to send a transcript of this resolution to Governor Stevenson, and ask of him a copy of his Address for publication.

Charles A. Peabody, of New York :

I desire, and it gives me great pleasure, to second that resolution, especially the sympathetic terms in which it speaks of Governor Stevenson. I left him a fortnight ago at the White Sulphur Springs, in his usual health, and full of promise. The old gentleman was much pleased with the prospect of being here and having the pleasure of addressing you, as he has had forebodings for some time past that his health was precarious. It is a little doubtful if I would have been here but for the pleasure of meeting and hearing him. No more genial man is embraced in our body, and no one who appreciates more fully the pleasing professional and social relations begotten and enjoyed here. I am very happy, sir, to second the resolution.

The resolutions were passed by a unanimous vote.

The President:

I beg leave to present to the Association now, Mr. Baldwin, of the Yale Law School, who will read a paper in accordance with the programme, to which I now ask your attention.

Mr. Baldwin then read a paper on the subject of "Preliminary Examinations in Criminal Proceedings," which will be found in the Appendix.

The Treasurer presented his Annual Report, with the certificate of the auditors appended. (*See infra.*)

John L. Thomas, of Missouri:

If it is in order, I will offer the following:

Resolved, That the Vice-Presidents of this Association be, and they are hereby requested to prepare and forward to the Chairman of the Executive Committee, on or before the first day of June, 1884, summaries of the judicial systems of their respective states, which the Executive Committee shall report to this Association at its Annual Meeting, with such suggestions and recommendations as it may deem proper to make.

Mr. President,—I take it that one of the chief objects of this Association is to take such measures as will tend towards uniformity in the judicial systems of the United States, though complete uniformity may never be reached. Much has been said about the multiplication of books of reports, and the constantly increasing labor of the lawyer and the judge to reach a just conclusion; but the multiplication of books of reports is not the only evil resulting from our present legal methods. Thirty-eight tribunals, differently constituted, though drawing their fundamental principles from the same sources, are building up thirty-eight diverse systems of law and judicial administration upon diverse statutes, so that to-day, in many instances, the opinions rendered are of no authority in any state except the one in which they are rendered; and in order to know whether a given opinion is authority, the lawyer and judge must not only study the cases in the same state *in pari materia*, and ascertain to what extent the doctrine laid down is tinged and colored by local customs and habits of thought, but they must also investigate the statutes which have probably controlled the judgment of a court whose very constitution and jurisdiction are a sealed book to them. All thoughtful jurists who have given this subject any consideration feel that the law is growing too large and complicated, and that if the present methods of legislation and judicial administration

be continued, we shall all be driven inevitably to specialties. In my view, therefore, this Association can accomplish more good by taking such measures and giving our discussion such direction, as will tend directly to *unify* our system of legislation and judicial administration in the several states; and, to the end that we may have the proper statistics upon which to act in the future, I have introduced this resolution calling upon the Vice-Presidents to give us the various judicial systems of our states. I hope the resolution will meet the approval of my brethren present, and will pass.

William Allen Butler, of New York:

It seems to me that this resolution should go to the Committee on Judicial Administration and Remedial Procedure, of which Mr. King, of Ohio, is Chairman. That committee is specially charged with the consideration of the subject embraced in the resolution, and I move to amend by having the required information given to that committee.

John L. Thomas, of Missouri:

I will accept that amendment.

The resolution as amended was adopted by a vote of 38 to 10.

Robert G. Street, of Texas:

Mr. President,—With the permission of Professor Baldwin, I would like to ask him a question or two with reference to the article which he has just read.

Simeon E. Baldwin, of Connecticut:

With great pleasure, sir.

Robert G. Street, of Texas:

In the first place, is it not embraced within one of the eleven amendments of the Constitution of the United States,

and is it not also a provision common to almost all the state constitutions, that the defendant, in all criminal prosecutions, shall have the right to be represented by counsel? and does not the term "prosecution" embrace all the proceedings after arrest, preliminary as well as final? I have understood you to say that you were willing to accept the constitutional provisions as they stand. That is the first question I wish to propound.

Second, with reference to the constitutional provision that the defendant shall not be required to testify against himself, or words equivalent thereto. If he is made a competent witness, and his failure or refusal to testify at the instance of the state is, as argued by yourself, to be considered by the jury as evidence against him, would it not in effect be to compel the defendant to give evidence against himself? In other words, would you not construe the constitutional provision last referred to, to read that the defendant shall not be compelled by physical force to testify against himself?

Simeon E. Baldwin, of Connecticut:

Of course, Mr. President, the views that I have suggested this evening have been put forward in the spirit of an advocate. I do not dispute that there is strong ground in favor of the position taken by the gentleman who has just taken his seat. The statutes passed by our states, which forbid the court and the counsel to comment to the jury upon the silence of the prisoner on his trial, were undoubtedly dictated in part by the belief in the legislature that this constitutional guarantee did impliedly require that such an immunity should be explicitly accorded to him; that no presumption should be drawn against him from his silence. But I contend and believe, sir, that a sound and intelligent construction of our state constitutions leads to a different conclusion—that we have gone too far—because a general sentiment of human-

itarianism has characterized both our legislation and our judicial practice. And as to the amendment to the national Constitution (made not, I think, in the eleventh Amendment, but in an earlier one), giving the defendant the right of counsel, I should differ from my friend in thinking that that referred to preliminary proceedings. It seems to me that that means counsel when he is upon his defense—when he is upon trial. It certainly does not mean that before the grand jury he is entitled to counsel. Why should it be strained to mean that he is entitled to counsel in the presence of the committing magistrate, and at the first stage of the proceedings, before a witness is called, or the charge itself is formulated? All this, I should say, remains a matter for legislation, unfettered by the constitutional provision to which reference has been made.

The President:

Is any further discussion of the paper which has been read desired, or any further business to bring before the Association this evening?

W. H. H. Russell, of New York:

On the day's programme there is a call for the report of special committees.

The President:

The Chair called for those, but there were not any committees ready to report. I should be happy to have them now, if there are any reports to be presented.

W. H. H. Russell, of New York:

There was an important matter laid upon the table by Mr. Vaux, of Philadelphia. We should like to know whether that is to be read.

Henry Reed, of Pennsylvania:

As a member from Pennsylvania, I desire to state that we do not wish to call that up until to-morrow.

The President :

That was laid upon the table, subject to Mr. Vaux's call. Of course it is also subject to the call of the Association.

I announce the appointment of Mr. Anthony Q. Keasbey, of New Jersey; Mr. Charles S. Bradley, of Rhode Island; Mr. Francis Rawle, of Pennsylvania; Mr. Andrew Allison, of Tennessee; and Mr. Daniel Roberts, of Vermont, as the Committee on Publications.

The meeting then adjourned.

Friday morning, August 24, 1883.

The meeting was called to order at 10.30 o'clock, by the President.

Wm. Allen Butler, of New York :

The Executive Committee are in receipt this morning of a telegram reading as follows:

"NEW YORK, August 24, 1883.

"Steamer Celtic below. Will arrive about 8 A. M."

This apprises the Association of the arrival in this country of Lord Chief Justice Coleridge. The Association referred to the Executive Committee a resolution in reference to this subject, and the committee have instructed me to report to the Association their action. Of course, the arrival of this distinguished guest of the New York State Bar Association to-day precludes the possibility of our securing, as was hoped at first, his presence here. The Executive Committee have agreed upon the minute which I now present:

"The Executive Committee, to which was referred the subject of the expected visit to this country of Lord Chief

Justice Coleridge, of England, and the action to be taken in reference thereto, having just received by telegraph the news of his arrival in New York by the steamer Celtic, present the following minute for the approval of the Association, to be placed on its record and to be immediately communicated by telegraphic message, signed by the President and Secretary:

"To LORD COLERIDGE:

"The American Bar Association, convened in its Annual Meeting at Saratoga Springs, being advised by telegraph of the arrival this day in New York of Lord Chief Justice Coleridge, extends to him, on behalf of the entire Bar of the United States, federal and state, as here represented, a most respectful and cordial welcome, with the expression of the earnest wish that the interest taken by the American Bar in his visit to the United States, marked by their sincere esteem for his personal character and eminent professional and public services, as well as by their respect for his high office, may in some degree contribute to the pleasure and satisfaction which it is hoped may attend his sojourn in this country."

I move the adoption of that minute, and that it be communicated by telegraph, signed by the President and Secretary of this Association.

The resolution was unanimously adopted.

NOTE.—An answer was afterwards received by telegram to the foregoing, which is as follows:

"To A. R. LAWTON, Esq., *President*, and

"EDWARD OTIS HINKLEY, Esq., *Secretary*.

"The Lord Chief Justice of England desires to return his cordial thanks for the welcome which has been sent him. None could be more grateful to him in regard of the sentiments conveyed and of the body which conveys them."

Judge Poland here read a list of new members approved by the Council. (*See List of Members Elected, at the end of the General Minutes.*)

The nomination of officers for the ensuing year was then read, and they were unanimously elected. (*See List of Officers at the end of the General Minutes.*)

The President:

The regular business, as provided for in the programme, having been disposed of, any other matters lying upon the table may now, upon motion of the parties who introduced them, be taken up; or any miscellaneous business may be called up.

C. C. Bonney, of Illinois:

Mr. President,—There are two or three matters in the way of miscellaneous business, to which I desire to call attention. First, suffer me to call up the resolution which I had the honor to introduce yesterday in relation to the next meeting of this Association in Chicago. I desire most especially to say that the proposition to meet in Chicago did not originate with me or any other Western man. The suggestion was made by an Eastern member of the Association, and nothing could be further from my desire than to have any constraint in the way of changing the place of meeting of this body. Nothing could be more delightful to Western members than to come to Saratoga. The only considerations that would make us willing rather than desirous to have a change, would be those relating to the general welfare of the Association. If the body should meet in Chicago next summer, it would undoubtedly come in a closer personal contact with the bench and bar of the northwestern states than would be possible under other circumstances. That the Association would be most welcome there, I may say with entire confidence. After the suggestion was made, I was authorized and requested by the manager of one of our leading daily papers—and I think I can speak with equal

confidence for the others—to say that if it should be the pleasure of the Association to meet in Chicago, he would give from one to two pages each day to the reports of the Association; and, being furnished with copy, would publish all the leading papers the next day after their delivery. That service has been rendered to other public bodies on various occasions. I feel warranted in saying also that under those circumstances the Louisville *Courier-Journal* and the Cincinnati and St. Louis newspapers would aid in spreading the influence of this body by publishing full accounts of our proceedings. The Palmer House will place at our disposal suitable rooms for the purposes of our meeting, free of charge; and a church, centrally located, is also offered for our meetings, at an expense estimated to cover the care and lighting of the house. So far as the climate of Chicago in mid-summer is concerned, I assure you that it would not be found less cool and delightful than that which we enjoy here. Now, having said thus much, I shall forbear to enter into any eulogy of Chicago. As the greatest of all orators said of Massachusetts, I may say of her. Since her baptism of flame in 1871, all the world knows her history by heart; it needs no repetition here, and the Garden City requires no eulogium at my hands. What I desire is—and I am sure I speak the real sentiments of my brethren in the Northwest—that the bar in the great Northwest should have an opportunity to meet the distinguished gentlemen who have gathered here in Saratoga. Some of us can come here and share in the delights of these annual reunions, but to the great majority that is not practicable. But if you come to Chicago, let it be not by the votes of the Western men, but by the voluntary action of the entire Association. Nay, more than that, let it be by the hearty desire of the members of the Association who live in the Eastern states. I beg your pardon for having occupied so much time. I

will not even move the adoption of the resolution. If it be moved, it must be by some other voice.

E. F. Bullard, of New York:

As a local representative of Saratoga, allow me to say that we shall not oppose at all the choice of this meeting, and will be pleased to meet our friends at Chicago. We feel flattered in having had the Association here for the last six years, but I wish to say, in addition, that so far as the question of expense is concerned, the Town Hall at this place would give us rooms without charge if it is desired to remain here. We have this year added a new Court of Appeals room to the building, and it will hold quite as many as this room. We have also a library belonging to the state, in the Town Hall, consisting of over ten thousand volumes, and I wish to say now to any member present, that it is open at all times of the day, and members will be cheerfully welcome to examine the library and use the books during their stay here. I merely make these statements as due to Saratoga, but we shall not oppose any desire of the Association, if thought best for its good, to go to Chicago.

Henry B. Brown, of Michigan:

I am opposed to the proposed removal of our meetings to Chicago. God forbid that I should say anything against Chicago! I am willing to put myself upon record here as admitting that it is the finest, the wealthiest, the most populous city upon the face of the earth, but it is not the place for this Association, in my humble opinion as a Western man. What we should gain by an increased attendance of Western men, we should lose by the absence of a great many eminent men of the East. Chicago undoubtedly has many advantages for a convention of this kind, but as a summer residence it is not a delightful place, as I am informed; it is not the place in which lawyers from the Union

congregate as they do in Saratoga, which is recognized as the summer metropolis of the country. A great many persons come to this convention incidentally to their summer vacation, and it is very pleasant to come here to meet gentlemen of the bar from all of the states, and make their acquaintance. Indeed, I regard this as one of the chief objects of an Association of this kind. It seems to me that it must be apparent that Chicago, while it may in numbers draw as many as Saratoga, will not draw from the area that this place will for its attendance. I think it would be a mistake to change the location of this convention, and I therefore desire to say that, for one, I shall oppose this resolution.

John M. Gaut, of Tennessee:

A resolution was passed by the Tennessee Bar Association last year upon this subject, but owing to the absence of the Secretary of that Association, I was unable to have it here. The Association of Tennessee earnestly desires that the next meeting of this Association shall be held at some more central locality. They would suggest some one of the central states, without designating any particular one. My own ideas are that they would be better suited by a meeting in Virginia than elsewhere; but as there seems to be some difficulty in having the Association accommodated there, I am inclined to think Chicago would come nearer suiting their wishes than any other place that occurs to me. I would say further, Mr. President, that we lawyers of the South recognize our profession. We believe that it has more potency than any other in fixing the standard of public morality and business integrity; that it has more influence in commanding a respect for law and the powers of government. We understand that it has more to do in shaping the jurisprudence of the country and the machinery for the administration of its laws than any other. But we

do not believe in monopolies. We believe that he who advances the interest and increases the influence of the legal profession is his country's greatest benefactor, and in this great work we intend that the South shall have its due share. We intend that the newly awakened South—and, if you will permit me to say it, the young South—shall occupy a position in the front rank. Now, we think that a meeting of this Association in some place more accessible to Southern members will elicit their interest in the Association and its proceedings, and will have a benign influence upon them. For that reason we earnestly desire—or, at least, I, in speaking for my Association, would say that we earnestly desire—that the resolution presented by the gentleman from Illinois shall be adopted.

W. H. H. Russell, of New York :

I move the adoption of the resolution.

The motion was seconded.

Henry B. Brown, of Michigan :

I offer this amendment, that the word "Chicâgo" be stricken out, and "Saratoga" inserted.

The motion to amend was seconded.

A. Porter Morse, of the District of Columbia :

The effect of that amendment will be to suppress discussion on this subject, to which, it seems to me, members are entitled.

The President :

The amendment will not stop the discussion, in the opinion of the Chair.

Rufus King, of Ohio :

I move that the whole subject be referred to the Executive Committee.

Charles A. Peabody, of New York : I second that motion.

Edward Otis Hinkley, of Maryland:

As one of the members of the Executive Committee, I would like to say a word. Nothing is more important than for a man to know the will of his master, if he is disposed to obey and fulfill the duties of his function. The Executive Committee desire only to be your obedient servants. Last year, Mr. President, it must be recollected, a vote was had of 38 to 27 to go to Green Brier, White Sulphur Springs. Our only reason for not going there was because the proprietor of that establishment said that it was impossible to accommodate us. I think the gentleman from Illinois is right in one particular at least, that this Association should not go to the West by the particular desire of Western men, or by their votes, even if they had a majority and could control our action. It must be done by gentlemen from Eastern states, with the concurrence of the South. The question lies rather deeper than the matter of pleasing accommodations. It is whether the objects of this Association will be best promoted by staying here or going elsewhere. The last object named in the Constitution is to "promote cordial intercourse." With whom? With the members of the profession throughout the country. Now, I will go to the very lowest point at once—the money question. There are a good many members of the profession who have not the means to come here from a great distance. That, I submit, is a good argument. It is, to be sure, a low question to appeal to; but we must come down to the bottom plane in a good many of these questions. I think the register of the Association will show that members get tired of coming here year after year. Now, we must settle this question, and I suppose it ought to be settled at this meeting; but if not now, then it must be settled some day, whether we are to remain in Saratoga permanently or we are to move around. I should be perfectly willing to come to Saratoga every second year, and

to go to Chicago or to Atlanta, in Georgia, or elsewhere, in the odd years. As to climate and conveniences and other questions, of course those are secondary. We can meet five hundred men there instead of a hundred and fifty here. We can send an influence over about six or eight states of the West that will promote the objects of this Association. I think we should lay aside all personal considerations, and look only to the best interests of the Association in this matter. As one of the Executive Committee, I wish that this body, without avoiding the question, shall meet it fairly and distinctly, and give us their orders, and not refer it back to us. The distinct vote of the Association last year would have been obeyed by the committee if it could have been done, and whatever vote is taken this year, I think I may promise that we shall obey. Referring it to the Executive Committee means to stay in Saratoga. To amend the resolution by striking out the word "Chicago" and inserting "Saratoga" means the same thing. I beg leave to say that I think we ought to have the clear, distinct, unequivocal, expression of the Association itself in a matter of so grave importance.

Rufus King, of Ohio:

I would prefer to save what time we have left to-day for other matters, and I therefore suggest that the Executive Committee ascertain, by circular addressed to the members present, the sentiment of this body on this question.

C. C. Bonney, of Illinois:

If it is the pleasure of Mr. King to amend the motion in that way, I shall be most happy to accept.

Rufus King, of Ohio:

I move that the subject be referred back to the Executive Committee for the purpose of ascertaining, by a circular, what are the wishes of the Association.

W. H. H. Russell, of New York :

At the last Annual Meeting it was discussed and determined that the best interests of this Association would be promoted by a meeting at White Sulphur Springs. The only reason why it was not held there was, as stated by the Secretary, because of the lack of accommodations at this season of the year. Now, there are many reasons why the interests of the Association would be advanced if its meetings were held in Chicago. The Palmer House has tendered us its large hall. Its newspapers have offered to aid us by printing full reports of our meetings. At our last meeting, on page 17 of the Report, it will be found that Mr. Bullard, of New York, in urging some of the reasons for the increase of the interests and purposes of the Association, used this language: "If the Association could at all times succeed in getting about one hundred to one hundred and fifty or two hundred members to attend the annual sessions, that would be enough to carry on the business properly, while the great usefulness of the work of the Association would be promulgated by the publication of the annual reports." Now, the gentleman from Chicago states that the press of that city have tendered to the Association, through its columns, the publication of its proceedings. We all know that the press to-day throughout the United States gets only a very abbreviated telegraphic report of our proceedings. The local press do the best they can with the space they have. If the Chicago press publishes the proceedings of this Association, the purposes of this organization will be enhanced fifty-fold. I believe we shall have a larger attendance in Chicago than here, Mr. President, and I am in favor of the adoption of the resolution.

John M. Moore, of Arkansas:

It seems to me that this question properly belongs to the

Executive Committee, under the provisions of the Constitution, and that the only way to effect the object of the resolution is to change the Constitution. Article IX. of the Constitution reads as follows: "This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum." Therefore the Constitution must be amended before this resolution can succeed.

Alexander Porter Morse, of the District of Columbia:

I offered my amendment for the purpose of meeting that point. I second Mr. King's motion that it be referred to the Executive Committee. That committee will act in accordance with the general view of the Association.

John M. Moore, of Arkansas:

It is the opinion of the President that it is competent for the Association to instruct the Executive Committee.

Rufus King, of Ohio:

I move that it be referred to the Executive Committee, with a request that they ascertain, by a circular to each of the members of the Association, their wishes or views as to changing the place of meeting, and I move the previous question.

John M. Shirley, of New Hampshire:

I did not vote for the suggestion last year to go to White Sulphur Springs, although I suggested to gentlemen that I was willing to go. The truth is, I rather wanted to go. I think we Eastern men are entirely willing to go to Chicago or Atlanta or White Sulphur Springs; but we want that to be done which is for the best interests of the Association. I have had the idea from the outset that this

was a matter which, by the Constitution, belonged to the Executive Committee; that it was made their duty to determine it; but I believe that those present here can determine this matter, and then the matter will be settled.

Charles A. Peabody, of New York :

It seems to me that this reference to the Executive Committee, with rigid instructions as to just what they shall do, is really very much like sending a servant without any discretion in the matter. I would like to have this thing referred to the Executive Committee. I am not opposed to going to Chicago, and I am in doubt how I would vote upon that subject. Last summer I had the pleasure of seconding the resolution to go to White Sulphur Springs. It is an ancient, historical region. The whole of this country was once represented by the Green Brier, White Sulphur Springs; and I had great respect and veneration for the fact that the Southern gentlemen of Savannah, in your state, sir, and from South Carolina, in the months of May and June, prepared their horses and carriages, and started for a three or four weeks' tour to that place, where they met kindred spirits, and where they were accustomed to enjoy themselves and consider and mature the subjects of national as well as social interest. I am in favor, sir, decidedly, of taking the course that is most acceptable to this body. I am in favor of referring this matter to the Executive Committee, with nothing more than a suggestion to them as to the manner in which they shall consult the wishes of the body. I would not have the Executive Committee send out inquiries to all the members of this Association, and get answers from several hundred who never attend the meetings, and let them prevail; but I would have the committee exercise their own discretion and good judgment on the subject.

John M. Gaut, of Tennessee :

I have a resolution which coincides with the sentiments which have been expressed, I think. It is this :

Resolved, That it is the sense of this Association that the Executive Committee will subserve the interests of the Association by calling the subsequent meetings in different sections of the country from year to year, as far as practicable.

Alexander Porter Morse, of the District of Columbia :

That is not in order at this time.

The President :

Does the gentleman from Ohio accept this in lieu of his resolution ?

Rufus King, of Ohio: No, sir.

The President :

The Chair is of the opinion that the amendments have gone as far as they can under the rule.

Robert D. Benedict, of New York :

As I understand the resolution of Mr. King, it does not bind the Executive Committee. It simply requests them to ascertain the sentiment of the Association by a circular addressed to all the members of the Association, and it still leaves to that committee the selection of the place;—not merely to register the vote of the majority, but to select the place of meeting. In view of all the considerations which have been suggested, it seems to me that that is where the matter ought to be left.

Charles A. Peabody, of New York :

That is undoubtedly the purpose of the resolution, but I wanted to avoid the necessity of compelling them to do just what a mere servant would do. I agree with the gentleman who has just spoken, if they are left free.

Wm. Allen Butler, of New York :

I trust that the motion will not prevail. The gentlemen who take the trouble to come here certainly ought to be able to give an intelligent expression of their views, and give it here. Now, to put upon the Executive Committee and upon the Secretary—because it would fall upon him—the laborious duty of consulting by mail with several hundred gentlemen, I think is very onerous, and will lead to no good result, because gentlemen who receive the circular may or may not attend to it. The place of our next meeting should be printed upon the record of the proceedings this year. Article IX. of the Constitution entrusts this matter to the Executive Committee, and it belongs to them. It is their province to act upon the question. Any expression of opinion by the Association at its Annual Meeting would receive their most respectful attention. It could not be binding upon them, unless you amend the Constitution by a two-thirds vote. If as was done last year, of course the committee would endeavor to accommodate their decision to the views thus expressed. We made an honest effort last year to go to White Sulphur Springs. I saw the proprietor myself, and he told me he would make every possible effort to accommodate us. But it turned out that we wanted to go there, perhaps two hundred strong, in the middle of the season. Therefore we had to give that up. If it is the sense of a large portion of the gentlemen here that it would be advisable to go to Chicago, let us have that expressed, and then the Executive Committee will have some guide in determining the question confided to them by the Constitution. I trust this resolution of my friend will not prevail.

John M. Moore, of Arkansas :

I move to lay the original resolution on the table.

Wm. Allen Butler, of New York : I second that motion.

John M. Gaut, of Tennessee:

I hope the gentleman will withdraw his motion for a moment. I have a resolution to read.

John M. Moore, of Arkansas:

I withdraw the motion to lay on the table, and then the gentleman can introduce his resolution as an original.

C. C. Bonney, of Illinois:

I have a painful consciousness that time is being occupied, and therefore am extremely anxious to facilitate matters. I am quite willing to withdraw my resolution if before the offering of any resolution it may take the sense of what is in here. I beg the indulgence of the meeting to let our brother from Tennessee present his resolution. Perhaps it may cover the ground.

The President:

Let the gentleman from Tennessee read his resolution, then.

John M. Gaut, of Tennessee:

Resolved, That it is the sense of this Association that the Executive Committee will subserve its interests by calling its subsequent meetings in different sections of the country, from year to year, as far as practicable, and it recommends that the next meeting be held at Chicago.

C. C. Bonney, of Illinois: I withdraw my resolution.

Robert E. Monaghan, of Pennsylvania:

Is there not a motion pending to lay on the table?

The President:

That has been withdrawn. Every motion growing out of Mr. Bonney's resolution is taken from the consideration of the house. It was competent for the mover of the original resolution to withdraw it, notwithstanding the motion had been made to lay it on the table.

Robert E. Monaghan, of Pennsylvania:

The gentleman has not withdrawn his resolution. He declined to offer it.

The President:

The point may be well taken; but the resolution was introduced by the gentleman from Illinois, and though he did decline to offer its adoption, through modesty characteristic of his region, it was offered nevertheless.

C. C. Bonney, of Illinois:

To split that hair with perfect precision, let me say that I moved the resolution and laid it on the table temporarily, but I said, precisely, that I would not even call for the adoption of the resolution. That was left to my friend from New York. It was a calling for the adoption of my resolution, not the adoption of another resolution.

Richard T. Merrick, of the District of Columbia:

Has the resolution of the gentleman from Illinois been withdrawn.

The President: It has.

Richard T. Merrick, of the District of Columbia:

Then there is nothing before the house?

The President: There is nothing before the house.

At this point the member from Tennessee read his resolution.

Richard T. Merrick, of the District of Columbia:

I move to lay that resolution on the table.

The President:

The question will be put if the Association understands it. The question is upon the motion of the gentleman from Washington to lay this resolution on the table.

The motion to lay on the table was carried by a vote of 54 to 20.

Henry Reed, of Pennsylvania :

The report of the committee of the Law Association of Philadelphia, appointed December 5th, 1882, to consider the subject of the delays to suitors in the Supreme Court of the United States, and the various plans for the relief of that court which have been suggested, was introduced by Mr. Vaux, and laid upon the table, subject to the call of the Association. To bring up the whole matter, I would now offer the following resolution :

Resolved, That this Association commend to the consideration of Congress, with its approval, the scheme for a single court of appeal to hear all appeal cases in which the jurisdiction of the circuit courts has been acquired by the citizenship of the parties only, and the appointment of an additional circuit judge, who, with the circuit and district judges of his circuit, shall constitute the circuit court *in banc*, substantially as the same is provided for in the bills proposed by the Law Association of Philadelphia.

W. H. H. Russell, of New York :

I move that the resolution be referred to the committee on Judicial Administration.

Henry Reed, of Pennsylvania :

I hope that that will not be done without some expression of views from this Association. It is very possible that this question may cease to be a living issue before the next meeting of this Association. It is hardly probable that this subject will come before us again. I think that if the Association takes any action, it had better do so now. It is not well to adjourn without some further discussion upon this particular measure. I hope that that resolution will not be passed.

W. H. H. Russell, of New York :

For the purpose of allowing the gentleman to discuss-

the merits of the matter referred to, I will withdraw my motion for the present.

Henry Reed, of Pennsylvania:

I come here to ask your consideration of the subject of delays in the United States Supreme Court, and the various plans for the relief of that court. I come as a messenger. Should I succeed in doing it in such a way as to enlist your interest, my mission will have been fulfilled.

The Law Association of Philadelphia is a body of some age, and I think I may say of some standing. It is the organization of one of the oldest bars of the country, with a past of which it has every reason to be proud, and a future to which we may look forward with hope. That Association has given this subject considerable attention. It has, during the past winter, taken up two subjects for consideration: How to speed the disposition of cases in the Supreme Court of the State of Pennsylvania, and also the speedy disposition of cases in the Supreme Court of the United States. The committee to whom that latter problem was referred took up the proceedings of this Association at its last meeting, and gave them most careful and, I think, most impartial attention. I do not think that men ever brought to a subject less prejudice than the members of that particular committee. I will not say of its members that they were not the advocates of special measures; but after having read all that was said on both sides, they thought that the problem before them was not whether to advocate one or the other of those measures, or to strengthen the party on one side or the other. They endeavored to see if it was not possible to hit upon some plan by which the object in view might be accomplished.

You will pardon me if I take up a little of your time in considering the two bills before this Association last year,

and then calling attention to the manner in which the plan suggested by the Philadelphia Association endeavors to meet the desired objects.

The bill introduced by Senator Davis provides substantially that there shall be a court of appeal in every circuit of the United States, which shall consist of six judges, and that their finding shall be final in most cases. The committee made an examination as to the character of the cases which come up in the Supreme Court, and it was found that one-third were those depending on citizenship only—cases which had nothing whatever to do with the law of nations or the Constitution and laws of the United States, for the settlement of which the Supreme Court of the United States was established. They involve questions of common law, which it has always been deemed that the courts of highest resort in the various states are competent to decide, and they are brought to the Supreme Court simply because there is no other court to which an appeal would lie. Why should not a court of appeal, of equal dignity with the supreme courts of the states, be equally competent to hear and decide such questions? Such a court would secure to a defendant who fears prejudice all that he could obtain in the courts of his own state, viz.: a fair trial by an impartial tribunal, and a review by a court of great dignity, whose jurisdiction would be solely an appellate one.

There was a practical objection to establishing one new court, that, if it were to hold its sessions in Washington, there would be the loss of one conspicuous merit of the Davis bill—the convenience to suitors. A single court of appeal might hold sessions once a year in each of the four great divisions of the Union. It would not be desirable that this court should pass finally upon any questions of strictly federal law; but it might be a court of

final appeal in all cases where the jurisdiction below was based merely on the citizenship of the parties, if it were not for the constitutional objection that there shall be "one Supreme Court." There must therefore be a right of appeal to the Supreme Court. The money-limit, however, may be fixed so high as practically to secure the advantage sought, while still keeping within the constitutional provision.

There remained one important and great benefit secured by the Davis bill, not provided for by the foregoing suggestions—the review of district and circuit court judgments in cases under \$5,000 in amount. This we have sought to obtain by the addition of one circuit judge to each circuit, who can share the labors of the present judge, while time will be secured to both of them to sit with the justice of the supreme court or the judge of a neighboring circuit court, and the district judge, as the circuit court *in banc*, in which there will be always at least two new minds to consider the rulings of a single judge.

Robert D. Benedict, of New York:

I have examined this report and the bill attached. I looked to see what remedy was proposed for the difficulties in the admiralty branch. To my great surprise I find nothing on that subject. I would ask the gentleman from Pennsylvania whether that matter was left out inadvertently or intentionally. Certainly it seems to me that it is a matter which should be attended to.

Henry Reed, of Pennsylvania:

The feeling was that we should take as few steps by way of change as possible. Our object was to keep the thing close to the issue. We did not go into the whole scheme of possible reform, because that seemed to be somewhat

beyond the question laid before us. If the language of the proposed bill is not sufficiently comprehensive to include admiralty cases, the sub-committee of the Law Association of Philadelphia, who are here present, have authority to make the necessary change.*

Robert D. Benedict, of New York :

It seems to me that the Law Association of Philadelphia in this respect have left out the point where relief was mainly needed. There is no part of the judicial system where there are greater difficulties felt in reference to that matter than in reference to admiralty cases, and yet this bill provides for an appeal to three judges of the Supreme Court in all cases of law and equity, but says nothing whatever of any relief to admiralty. That is, to my mind, simply a reason why this matter should be referred to a committee of this Association for report.

William P. Wells, of Michigan :

The subject brought before the Association by the resolution offered by the gentleman from Philadelphia was, as he doubtless is aware, the main subject of the discussions—at least the most important subject of the discussions—of the

* It has been suggested, upon the authority of *Atkins vs. The Disintegrating Company* (18 Wallace, 272), that the words used in section 14 of the proposed bill, viz., "every case of writ of error, appeal, . . . or other proceeding at law or in equity designed, as allowed by existing law, to obtain a review of any decree, judgment, finding, or ruling of any judge of the circuit or of the district court," do not include cases of admiralty or maritime jurisdiction. But it may be doubted whether the decision in *Atkins vs. The Disintegrating Company*, being the result of a comparison of several acts *in pari materia*, which had a special purpose, would be extended to a statute of so general a character as the proposed bill. To meet all doubt, however, the fourteenth section of the latter could be amended to read, "every case of writ of error, appeal, . . . or other proceeding at law or in equity, or belonging to the admiralty or maritime jurisdiction," etc.—HENRY REED.

Association last year. It was brought before the last meeting of the Association upon the report of a committee composed of the most distinguished members of this body, upon their majority and minority reports, which presented the two different schemes which have been before the profession for a long time, for the purpose of accomplishing this most needed relief. The discussion that followed upon the reports was an interesting one. The majority report was adopted as the sense of this Association. It stands, then, as the vote of this Association, that some scheme for this purpose, which involves the creation of intermediate courts of appeal, by addition to the number of circuit court judges, is the most desirable one to reach the object. I think the whole scheme proposed by the Philadelphia Law Association is commendable. My approval of the Davis scheme rested largely upon two considerations: 1. That it gave us more judges for circuit court duty, and it has been an especial hardship to the courts of the West that there was so little attendance on the part of the circuit judge. It has been our experience that the circuit court judge—not the Supreme Court judge assigned to the district, but the regular circuit judge—was a little disposed to abridge the time that he sat in the several circuit courts. Practically, as we all know, that results in making the judge of the district court final. And, as I say, that seemed to me an important element in deciding this question—that the Davis scheme provided more circuit judges. 2. My own mind was strongly influenced by what was known as the constitutional objection to the scheme of putting the Supreme Court into divisions. I do not think that my friends who favored that scheme successfully answered the objection, and I do not think it has been successfully answered anywhere. Now, upon these considerations it seemed to me that what is known as the Davis scheme was preferable. That proposed by the

bar of Philadelphia embodies substantially the creation of a number of intermediate courts of appeals, and provides additional circuit judges. It does not, however, provide for the session of a court of appeals in every circuit, as in the Davis bill, but for a session of this court of appeals in the four great divisions of the Union.

I am not prepared to say that, if it were desirable for us to take a final vote, I should not vote in favor of this proposition; but I do not think that year after year it is well for us to take action communicating our views of the question to Congress. I shall therefore, while entertaining with great respect this proposition, and desiring to keep it before the members of this Association, make a motion which will leave the matter open for full discussion, and that is to refer this resolution and the accompanying report to the Committee on Judicial Administration.

(NOTE.—Mr. Russell had already made that motion.)

The President:

Are you prepared for the question? The motion is to refer this whole matter to the Committee on Judicial Administration.

N. Dubois Miller, of Pennsylvania:

I merely want to make one explanation as to the reason for bringing this matter before the Association after it had been so thoroughly discussed at the last meeting.

It was thought that the voice of this Association should be powerful in influencing any legislation in Congress, but it was also thought that a house so entirely divided against itself, as the result of the discussion last year showed this Association to be, could hardly be so influential as a positive expression of opinion from the Association, if it could be obtained, in the interest of a measure which could secure friends from both sides of the house represented last year.

The only reason for bringing this matter now before the Association is, that we may ascertain whether it commends itself to a larger number than either measure proposed last year. For that reason only I should be anxious to hear some further discussion from gentlemen who are present.

D. S. Troy, of Alabama :

This matter has been pressing itself upon our attention for some time. It seems to me that the plan of dividing the Supreme Court into sections will accomplish the purpose better than the other plan. It was remarked in one of the papers read before this Association, that the judgment of three judges was ordinarily as good an exposition of the law as that of nine. Indeed, the opinion of the courts in most cases is the opinion of one man, shaped and modified, more or less, by collision with the intellects of his associates; but the experience of the legal profession, and its history, demonstrate that, for correct judgment, three men are all that are ordinarily required.

The constitutional difficulty about dividing the Supreme Court into sections, manifested in the debates on this subject at the last meeting of the Association, arises, it seems to me, from a want of discrimination between the decision of a cause and the judgment of the court. The two things are essentially distinct. The judgment affects the parties litigant; but the decision, as an exposition of the principles of law involved, affects the public. It is the right of the parties litigant to the judgment of the court which the Constitution secures, and not the right of the public to an exposition of legal principles in any given case. And this constitutional right of the parties to the judgment of the court is not violated because that judgment is rendered upon an exposition of the legal principles involved, made by a part only of the court.

Where a court is composed of three judges, we know that ordinarily the opinion is prepared by one of the judges; the other two assent, and the judgment of the court is entered in accordance with the opinion; and where the judges are overworked, or are indolent, it not unfrequently happens that the judgment of the court is based entirely on the *decision* of one man. This is an evil which has been felt in the supreme court probably of every state in the Union—certainly in every one whose decisions have fallen under my observation—and the existence of the evil illustrates the distinction between the decision and the judgment to which I wish to call attention.

When a judge has sufficient confidence in the learning, acumen, and sound judgment of one of his brothers on the bench, he can very conscientiously assent to the rendition of judgment in accordance with the decision of his brother judge, without a critical examination of the legal questions for himself.

The justices of the Supreme Court of the United States, and of all other supreme courts, doubtless do this now very frequently, and the proposition is to authorize the Supreme Court to do it avowedly, whenever the decision has been concurred in by three of their number. It is not proposed to substitute the judgment of a division or section of the Supreme Court for the judgment of the court itself, nor to *require* the court to render judgment in accordance with the decision of a division; but simply to *authorize* it. Unless the syllabus of the case presented a question of more than ordinary difficulty or importance, I apprehend that the judges of the Supreme Court, if authorized by law, would readily assent to a judgment based upon a decision of three of their number; and if the question was of such difficulty or importance as to render this course improper,

the case would be heard by the court *in banc*; or if the difficulty or importance of the question was only developed by the *decision* of the division, the case could be re-argued before the court *in banc*. Take up any volume of reports, and examine the first one hundred cases, and you will not find ten cases of such a character that the most conscientious judge would not have been willing to render judgment in them on the decision of three of his brethren on the bench.

It is not necessary to *require* the Supreme Court to render judgment on the decision of a division; it is only necessary to *authorize* it. Modern mechanical science has made no greater progress than in the proper use of gravitation; and if the judicial machinery is geared in the way proposed, judicial inertia will accomplish all, if not more, than is desired; and it will be very rare that a case will come along presenting a question which a majority of the judges will think requires a critical examination by every one of them.

I can see no reason why the Supreme Court could not be divided into three sections or divisions, each consisting of a chief of the division and two associates; each division to sit and hear causes at the same time. For example, the chief justice and two associates might hear cases involving constitutional or federal questions; the associate justice oldest in commission, as chief of a division, and two associates might hear appeals in equity and admiralty; and the associate justice next oldest in commission, as chief of division, and the two remaining associates might hear common law and criminal cases. If a case came before any division involving a question which the division thought ought to be decided by the court *in banc*, the case could be transferred to the docket of cases to be heard in that way; if the division proceeded to a decision, a syllabus of the case or a printed copy of the decision could be

presented to each of the judges ; and if a majority considered it a case requiring a decision by the court *in banc*, the case could be set down for re-argument before the whole court, otherwise judgment would be entered upon the decision of the division.

As the matter stands, we have nine men doing work, nearly all of which can be done just as well by any three of them ; and by authorizing them to divide their labors, more than twice as much can be accomplished as at present. This change would not interfere with the plan of intermediate appellate courts, but would probably render them unnecessary.

But I do not propose now to discuss the merits of either plan. A bill to divide the Supreme Court into sections as above suggested was introduced, I believe, in the United States Senate by one of the senators from Alabama. I merely wish to call attention to the clear distinction between the decision of the cause and the judgment of the court, which was overlooked in the discussion of this matter last year before this Association, and which, it seems to me, eliminates entirely the supposed constitutional difficulties.

James M. Dudley, of New York :

From the constitutional question, and the manner in which it is involved in this proposition discussed by my friend who has just taken his seat, why, if you can divide the Supreme Court of the United States into three separate divisions, and make the decisions of each of those three divisions the judgment of the court ; or rather, by legislative provision, determine that they shall be entered as the judgment of the court — why can you not divide it into nine sections, and make every one of the justices a chief justice of his own court ; and then, instead of having one or three divisions of the court, have nine of them ?

The motion to refer to the Committee on Judicial Administration and Remedial Procedure was adopted. (*See the Report in the Appendix.*)

Charles S. Bradley, of Rhode Island :

I suggest that they shall report to the Association. I believe that there is no such clause in the preceding resolution, in regard to what I may term "the Philadelphia plan." Is it or is it not understood that the committee has power to act, without reporting to this Association ?

The President :

If it is for the Chair to decide, the answer would be that it has not. The committee has no power to act unless it is distinctly given. They would only have power to report.

Edward Otis Hinkley, of Maryland :

There is nothing in the reference, Mr. President, of the matter to the Committee on Judicial Administration to give them power to act in any matter.

Nathaniel W. Ladd, of Massachusetts :

In regard to the resolution offered by the gentleman from Pennsylvania, as I understand, the committee will report at the next Annual Meeting of this body. If that is not so, I now move that they be requested to make such a report.

The motion was seconded.

The President :

It is virtually an addition to the resolution of reference, that the committee to whom that resolution has been referred be requested to make a report at the next Annual Meeting of this Association.

W. H. H. Russell, of New York : I accept the amendment.

The President :

As the resolution has already been passed, it is necessary

for the Association to act upon it, otherwise I would allow the gentleman to accept the amendment at once.

Upon a vote being taken to add to the resolution as stated by the President, the same was adopted.

The President :

There seems to be no further reports from the official bodies provided by this Association, and therefore any miscellaneous business is in order.

Frank P. Pritchard, of Pennsylvania, offered the following :

Resolved, That the paper read by Judge Thompson on "Abuses of the Writ of Habeas Corpus," he referred to the Committee on Jurisprudence and Law Reform, to report as to the best method of remedying such abuses.

The resolution was adopted.

J. Hubley Ashton, of the District of Columbia :

I desire to call attention to a brief resolution in relation to an event which has saddened the hearts of a great many members of this Association, and has occasioned, I think, a loss almost irreparable to the profession and to the country. I refer to the death of Jeremiah S. Black. Judge Black was not a member of this Association, and some doubt has been expressed by a number of the members in regard to the propriety of our noticing the death of any member of the profession, however distinguished, who was not connected with us. I myself have no difficulty in regard to that. As a general rule, of course, this Association has not felt itself called upon, and will not in the future feel called upon, to notice the death of distinguished lawyers throughout the country who are not members of this Association; but the case of Judge Black seems to me, and I think has seemed to many members of the Association, an exceptional one. He was undoubtedly one of the most distinguished men of our

profession. He was beyond all question one of the greatest advocates that the legal profession has ever embraced within its ranks. He was Attorney General of the United States, and I think it may be said that he was one of the greatest law officers of this government. I think the Association may well consider that in honoring his memory it is honoring itself. I therefore offer this resolution:

Resolved, That the American Bar Association has learned with deep regret of the recent death of Jeremiah S. Black, an eminent citizen and jurist of the state of Pennsylvania, formerly Chief Justice of that state, and Attorney General and Secretary of State of the United States, and hereby express the sincere and heartfelt sympathy of each and all of its members with the family of the deceased in their great affliction.

Resolved, That the President and Secretary of the Association and the Chairman of the Executive Committee are requested, as a special committee of the Association, to transmit to the widow of the late Judge Black a copy of the foregoing resolution.

The President:

Since reference has been made to the fact that this is an extraordinary case, and that some doubt may have been expressed as to its coming within the purview of the ordinary action of the Association, as your presiding officer, I have no hesitation in saying that I feel it is competent to put this question to the American Bar Association. The circumstances in the life of the distinguished deceased, the position which he held, and the fact that he was carried to his tomb at the very moment of our assembling, would seem to call upon us to give utterance to the effusions of our hearts; and though the notes of lamentation do burst forth from every quarter of this great country, yet we,

the members of the bar, mourn the loss of our illustrious brother with a sadness of our own. I therefore have no hesitancy in putting this resolution before you for adoption.

The resolution was adopted by a rising vote.

Luke P. Poland, of Vermont:

As there is no further business to be brought before the Association at this time, I move that the public meetings of the Association be adjourned.

The motion was seconded.

The President:

The motion is that we now adjourn the public meetings of this our Sixth Annual Convention, with the understanding that we meet for the purpose of partaking of our annual dinner at half-past eight o'clock this evening.

The meeting was then adjourned *sine die*.

EDWARD OTIS HINKLEY,

Secretary.

REPORT

OF THE

TREASURER.

SARATOGA SPRINGS, *August 22, 1883.*

The Treasurer submits the following Report for the year ending August 21, 1883:

Dr.

To balance from last report,	\$1,342 15	
To cash received—dues of members,	2,645 00	
	<hr style="width: 100px; display: inline-block; vertical-align: middle;"/>	\$3,987 15

Cr.

1882.			
Aug. 8.	By cash paid Expressage,	\$3 50	
	Printing,	1 50	
	Expenses of clerk to Executive Committee,	31 30	
	Janitor, Music Hall,	10 00	
	Incidental expenses of dinner,	7 00	
	Expressage,	1 40	
	Stationery and telegrams,	2 45	
Aug. 12.	Posting bills,	3 00	
Aug. 17.	Cash-box, etc.,	3 00	
	C. G. Artzt, expenses of Fifth Annual Meeting,	26 30	
Aug. 18.	J. H. Mimms, for copy of Fifth Annual Address,	10 60	
Aug. 26.	Expressage,	50	
Aug. 29.	Letter-files,	1 00	
	Amounts carried forward,	<hr style="width: 100px; display: inline-block; vertical-align: middle;"/> \$101 55	\$3,987 15

TREASURER'S REPORT.

77

1882.	Amounts brought forward,	\$101 55	\$3,987 15
Sept. 4.	By cash paid Expressage and telegrams,	40	
Sept. 9.	J. H. Mimms, stenographer,	60 00	
	Grand Union Hotel, Fifth Annual Dinner,	431 00	
	Postage,	32 00	
	A. Putnam, Jr., for use of Music Hall, four days,	120 00	
Oct. 20.	Postage stamps,	5 00	
Nov. 22.	Printing,	22 25	
Dec. 9.	Postage stamps,	5 00	
1883.			
Feb. 1.	Clerk to Treasurer, twenty-five weeks,	50 00	
Mar. 1.	Postage, expressage, etc., in mailing Fifth Report,	126 50	
	Clerical services in preparing and mailing Fifth Report, etc.,	50 00	
Mar. 10.	Printing Fifth Annual Report and Reports of Special Committee on Supreme Court Delays, and extra pamphlets,	1,191 95	
April 20.	Printing,	6 25	
May 2.	Postage for notices, etc.,	50 00	
June 1.	Printing extra notices,	80	
June 25.	" "	10 00	
July 20.	Postage stamps,	10 00	
	Printing extra notices,	60	
July 30.	Postage,	5 00	
	Expenses of Committee on Jurisprudence and Law Reform,	52 39	
Aug. 9.	Circulars and envelopes,	8 50	
Aug. 15.	Boxes,	2 00	
	C. G. Artzt, expenses sixth meeting,	41 50	
Aug. 16.	Printing programme,	18 00	
	Amounts carried forward,	\$2,400 69	\$3,987 15

1883.	Amounts brought forward,	\$2,400 69	\$3,987 15
Aug. 16.	By cash paid Clerk to Treasurer, balance		
	in full, twenty-nine weeks,	58 00	
	Sundry expenses, telegrams,		
	etc.,	7 94	
Aug. 21.	E. Otis Hinkley, postage, etc.,		
	expenses of secretary,	35 87	
		<u>\$2,562 50</u>	
	Balance,	1,484 65	\$3,987 15

Which consists of—

Balance to the credit of the	
Treasurer in the Common-	
wealth National Bank of	
Philadelphia,	1,480 21
Cash on hand,	4 44
	<u>\$1,484 65</u>

All bills due by the Association up to the time of making up this Report have been paid.

The expenses during the year have been much larger than in previous years; especially in printing the proceedings of the last meeting, and the supplemental volume containing the debate on the resolution of the Committee on Delays in the Supreme Court of the United States.

The balance reported at the end of the 1st year, 1879, was . . .	\$734 87
2d 1880,	825 98
3d 1881,	1,286 47
4th 1882,	1,342 15
5th 1883, as above, 1,484 65	

Respectfully submitted,

FRANCIS RAWLE,

Treasurer.

Audited and found correct.

WM. P. WELLS,

CHARLES BORCHERLING,

Auditing Committee.

LIST OF MEMBERS ELECTED.

ALABAMA.

MOORE, GEORGE F.,	Montgomery.
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CONNECTICUT.

HALSEY, JEREMIAH,	Norwich.
LUCAS, SOLOMON,	Norwich.
STANTON, LEWIS E.,	Hartford.
WEST, MAHLON R.,	Hartford.

DELAWARE.

GRUBB, IGNATIUS C.,	Wilmington.
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DISTRICT OF COLUMBIA.

DARLINGTON, JOSEPH J.,	Washington.
EARLE, WILLIAM E.,	Washington.
HAMILTON, GEORGE EARNEST,	.	.	.	.	Washington.
HOFFMAN, CHARLES W.,	.	.	.	.	Washington.
LANCASTER, CHARLES C.,	.	.	.	.	Washington.
MCARTHUR, ARTHUR,	.	.	.	.	Washington.
MCCAMMON, JOS. K.,	.	.	.	.	Washington.
MURPHY, D. F.,	.	.	.	.	Washington.

FLORIDA.

COOPER, C. P.,	.	.	.	.	Jacksonville.
COOPER, JOHN C.,	.	.	.	.	Jacksonville.

GEORGIA.

DU BIGNON, FLEMING G.,	.	.	.	.	Milledgeville.
GARRARD, WILLIAM,	.	.	.	.	Savannah.
MELDRIM, P. W.,	.	.	.	.	Savannah.
OWENS, GEORGE W.,	.	.	.	.	Savannah.

ILLINOIS.

ARNOLD, ISAAC N.,	.	.	.	.	Chicago.
BLACK, J. C.,	.	.	.	.	Danville.
DENT, THOMAS,	.	.	.	.	Chicago.
EDSALL, JAMES K.,	.	.	.	.	Chicago.
EDWARDS, B. S.,	.	.	.	.	Springfield.
GROSS, WILLIAM L.,	.	.	.	.	Springfield.
HAMILTON, JOHN M.,	.	.	.	.	Springfield.
MCCARTNEY, JAMES,	.	.	.	.	Springfield.
CULLOM, SHELBY M.,	.	.	.	.	Springfield.
MOULTON, S. W.,	.	.	.	.	Shelbyville.
MURPHY, THEODORE D.,	.	.	.	.	Woodstock.
ORENDORFF, ALFRED,	.	.	.	.	Springfield.
PALMER, JOHN M.,	.	.	.	.	Springfield.
RIGGS, JAMES M.,	.	.	.	.	Winchester.
TUTHILL, RICHARD S.,	.	.	.	.	Chicago.

INDIANA.

BAKER, JOHN H.,	Goshen.
GRESHAM, WALTER Q.,	Indianapolis.

KENTUCKY.

THORNTON, A. R.,	Lexington.
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LOUISIANA.

BLANC, SAMUEL P.,	New Orleans.
DENÈGRE, GEORGE,	New Orleans.
FARRAR, EDGAR H.,	New Orleans.
KENNARD, JOHN H.,	.	.	.	.	New Orleans.
KRUTTSCHNITT, ERNEST B.,	New Orleans.
LÉGENBRE, JAMES,	New Orleans.

MARYLAND.

HANDY, JOHN H.,	Baltimore.
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MASSACHUSETTS.

COLLINS, PATRICK A.,	Boston.
CURTIS, BENJAMIN ROBBINS,	Boston.
USHER, EDWARD PRESTON,	.	.	.	.	Boston.

MICHIGAN.

BAKER, FREDERICK A.,	.	.	.	.	Detroit.
BROWN, HENRY B.,	.	.	.	.	Detroit.

MICHIGAN—Continued.

KIRCHNER, OTTO,	Detroit.
MEDDAUGH, ELIJAH W.,	Detroit.
WALKER, CHARLES J.,	Detroit.

MISSOURI.

BARCLAY, SHEPARD,	St. Louis.
JUDSON, FREDERICK N.,	St. Louis.
LATHROP, GARDINER,	Kansas City.
MUNFORD, JAMES E.,	St. Louis.
TONEY, JAY L.,	St. Louis.

NEW JERSEY.

SCHENCK, ABRAM V.,	New Brunswick.
SHIPMAN, J. G.,	Belvidere.
WOODRUFF, ROBERT S.,	Trenton.

NEW YORK.

BRUSH, CHARLES H.,	New York.
BUTLER, WILLIAM ALLEN, JR.,	New York.
COX, S. S.,	New York.
DORSHEIMER, WILLIAM,	New York.
OLMSTEAD, AARON B.,	Saratoga Springs.
PEABODY, CHARLES A., JR.,	New York.
SHACK, FERDINAND,	New York.
TUCK, SOMERVILLE P.,	New York.

NORTH CAROLINA.

BRIDGERS, JOHN L., JR.,	Tarboro'.
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OHIO.

BURKE, STEVENSON,	Cleveland.
CHERRINGTON, THOMAS,	Ironton.
GROESBECK, WILLIAM S.,	Cincinnati.
HALL, JOHN J.,	Akron.
JOHNSON, WILLIAM W.,	Ironton.
KOHLER, JACOB A.,	Akron.
NEAL, HENRY S.,	Ironton.
OVIATT, EDWARD,	Akron.

OREGON.

DEADY, MATTHEW P.,	Portland.
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PENNSYLVANIA.

ATHERTON, THOMAS H.,	Wilkesbarre.
BREDIN, JAMES,	Butler.
LISTER, CHARLES C.,	Philadelphia.
MILLER, N. DUBOIS,	Philadelphia.
PRICHARD, FRANK P.,	Philadelphia.
ROGERS, GEORGE W.,	Norristown.
TOWNSEND, WASHINGTON,	West Chester.

RHODE ISLAND.

PAYNE, ABRAHAM,	Providence.
PECKHAM, FRANCIS B.,	Newport.

SOUTH CAROLINA.

DARGAN, E. KEITH,	Darlington C. H.
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TENNESSEE.

FRAYSER, R. DUDLEY,	Memphis.
GAUT, JOHN M.,	Nashville.

TEXAS.

GRESHAM, WALTER,	Galveston.
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VERMONT.

McCULLOUGH, JOHN G.,	N. Bennington.
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WEST VIRGINIA.

CAMPBELL, JOHN A.,	New Cumberland
COLE, W. L.,	Parkersburg.
DAVIS, JOHN J.,	Clarksburg.
SOMMERVILLE, J. B.,	Wellsburg.

RECAPITULATION.

States.	No. of Members.	States.	No. of Members.
ALABAMA,	1	NEW JERSEY,	3
CONNECTICUT,	4	NEW YORK,	9
DELAWARE,	1	NORTH CAROLINA,	1
DISTRICT OF COLUMBIA,	8	OHIO,	8
FLORIDA,	2	OREGON,	1
GEORGIA,	4	PENNSYLVANIA,	7
ILLINOIS,	16	RHODE ISLAND,	2
INDIANA,	2	SOUTH CAROLINA,	1
KENTUCKY,	1	TENNESSEE,	2
LOUISIANA,	6	TEXAS,	1
MARYLAND,	1	VERMONT,	1
MASSACHUSETTS,	3	WEST VIRGINIA,	4
MICHIGAN,	5		—
MISSOURI,	5	TOTAL,	99

MEMORANDUM.

The Annual Dinner was given on Friday evening, August 24th, at the Grand Union Hotel. Edward J. Phelps, of Vermont, presided. Over one hundred members were present.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any state, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each state; a Secretary; a Treasurer; a Council, consisting of one member from each state (the Council shall be a standing committee on nominations for office); an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be Chairman of the committee.

The following committees shall be annually appointed by the President, for the year ensuing, and shall consist of five members each :

- On Jurisprudence and Law Reform;
- On Judicial Administration and Remedial Procedure;
- On Legal Education and Admissions to the Bar;
- On Commercial Law;
- On International Law;
- On Publications;
- On Grievances.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting.

The Vice-President for each state, and not less than two other members from such state, to be annually elected, shall constitute a Local Council for such state, to which shall be referred all applications for membership from such state. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each state and territory to report the deaths of members within the same to the said committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the state to the Bar of which the persons nominated belong. Such nominations

must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same state with the person nominated, or, in their absence, by members from a neighboring state or states, to the effect that the person nominated has the qualifications required by the Constitution, and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same state, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the Committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable by-laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states and by Congress during the preceding year. It shall be the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation in his state.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word "*state*," wherever used in this Constitution, shall be deemed to be equivalent to *state*, *territory*, and the *District of Columbia*.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows:

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees:
 - On Jurisprudence and Law Reform;
 - On Judicial Administration and Remedial Procedure;
 - On Legal Education and Admissions to the Bar;
 - On Commercial Law;
 - On International Law;
 - On Publications;
 - On Grievances.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time, or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each state Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In states where no state Bar Association exists, any city or county Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country, or of any state, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association, may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies to each of such authors.

The Secretary and Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges, by which our *Transactions* can be annually exchanged with those of other Associations in foreign countries interested in jurisprudence or governmental affairs; and also that the Secretary exchange our *Transactions* with those of the state and local bar associations; and that all books thus acquired be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the latter association agrees to such deposit.

No resolution complimentary to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

ANNUAL DUES.

XIII.—The Annual dues shall be payable at the Annual Meeting in advance. If any member neglect to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this by-law, within sixty days after each meeting, to all members in default.

PRESIDENT,
CORTLANDT PARKER,
Newark, New Jersey.

SECRETARY,
EDWARD OTIS HINKLEY,
No. 43 North Charles Street, Baltimore, Maryland.

TREASURER,
FRANCIS RAWLE,
No. 402 Walnut Street, Philadelphia, Pennsylvania.

EXECUTIVE COMMITTEE.

LUKE P. POLAND, *St. Johnsbury, Vermont*, CHAIRMAN.
SIMEON E. BALDWIN, *New Haven, Connecticut.*
WILLIAM ALLEN BUTLER, *New York, New York.*

EX OFFICIO.

EDWARD OTIS HINKLEY, SECRETARY.
FRANCIS RAWLE, TREASURER.

COUNCIL.

<i>Alabama,</i>	DAVID CLOPTON.
<i>Arkansas,</i>	M. M. COHN.
<i>Connecticut,</i>	JEREMIAH HALSEY.
<i>Delaware,</i>	ANTHONY HIGGINS.
<i>District of Columbia,</i>	J. HUBLEY ASHTON.
<i>Florida,</i>	CHARLES P. COOPER.
<i>Georgia,</i>	GEORGE A. MERCER.
<i>Illinois,</i>	E. B. SHERMAN.
<i>Indiana,</i>	JOSEPH A. S. MITCHELL.
<i>Iowa,</i>	GEORGE G. WRIGHT.
<i>Kentucky,</i>	J. W. STEVENSON.
<i>Louisiana,</i>	THOMAS J. SEMMES.
<i>Maryland,</i>	HENRY STOCKBRIDGE.
<i>Massachusetts,</i>	EDMUND H. BENNETT.
<i>Michigan,</i>	WILLIAM P. WELLS.
<i>Minnesota,</i>	HIRAM F. STEVENS.
<i>Missouri,</i>	JAMES O. BROADHEAD.
<i>Nebraska,</i>	CHARLES F. MANDERSON.
<i>New Hampshire,</i>	JOHN M. SHIRLEY.
<i>New Jersey,</i>	JACOB WEART.
<i>New York,</i>	CHARLES A. PEABODY.
<i>North Carolina,</i>	THOMAS B. KEOGH.
<i>Ohio,</i>	EDWIN P. GREEN.
<i>Pennsylvania,</i>	HENRY REED.
<i>Rhode Island,</i>	CHARLES S. BRADLEY.
<i>South Carolina,</i>	EDWARD McCRADY, Jr.
<i>Tennessee,</i>	BEDFORD M. ESTES.
<i>Texas,</i>	T. N. WAUL.
<i>Vermont,</i>	LUKE P. POLAND.
<i>Virginia,</i>	LEGH R. PAGE.
<i>West Virginia,</i>	CALEB BOGGESE.
<i>Wisconsin,</i>	JOHN W. CARY.

VICE-PRESIDENTS
AND
MEMBERS OF LOCAL COUNCILS.

— — — — —

ALABAMA.—Vice-President, D. S. TROY.

Local Council, WALTER L. BRAGG, LUTHER R.
SMITH, DAVID BUELL, GAYLORD B. CLARK.

ARKANSAS.—Vice-President, U. M. ROSE.

Local Council, JAMES C. TAPPAN, BENJAMIN T.
DU VAL.

CONNECTICUT.—Vice-President, ALVAN P. HYDE.

Local Council, LYMAN D. BREWSTER, JOHNSON T.
PLATT, WASHINGTON F. WILLCOX.

DELAWARE.—Vice-President, THOMAS F. BAYARD.

Local Council, IGNATIUS C. GRUBB.

DISTRICT OF COLUMBIA.—Vice-President, H. H. WELLS.

Local Council.—RICHARD T. MERRICK, NATHANIEL
WILSON.

FLORIDA.—Vice-President, EDWIN M. RANDALL.

Local Council.—CHARLES W. JONES, JOHN C.
COOPER.

GEORGIA.—Vice-President, L. N. WHITTLE.

Local Council, N. J. HAMMOND, CHARLES C. JONES,
JR., R. F. LYON, WALTER S. CHISHOLM.

ILLINOIS.—Vice-President, C. C. BONNEY.

Local Council, CHARLES DUNHAM, GUSTAVE KOER-
NER, R. BIDDLE ROBERTS, ISAAC N. ARNOLD,
WILLIAM L. GROSS.

INDIANA.—Vice-President, BENJAMIN HARRISON.

Local Council, JOS. E. McDONALD, ROBERT S. TAYLOR, ABRAM W. HENDRICKS, AZRO DYER, THOMAS F. DAVIDSON.

IOWA.—Vice-President, GEORGE G. WRIGHT.

Local Council, OLIVER P. SHIRAS.

KENTUCKY.—Vice-President, WILLIAM PRESTON.

Local Council, JOHN W. STEVENSON, JOHN MASON BROWN.

LOUISIANA.—Vice-President, F. P. POCHÉ.

Local Council, CARLETON HUNT, THOMAS L. BAYNE, JOHN H. KENNARD.

MAINE.—Vice-President, NATHAN WEBB.

Local Council, F. A. WILSON, O. D. BAKER.

MARYLAND.—Vice-President, SKIPWITH WILMER.

Local Council, A. LEO KNOTT, RICHARD M. VENABLE, CHARLES J. BONAPARTE, JULIAN J. ALEXANDER.

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Local Council, SYDNEY BARTLETT, CHARLES W. CLIFFORD, NATHANIEL W. LADD, DANIEL S. RICHARDSON.

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Local Council, THOMAS M. COOLEY, ROBERT P. TOMS, DON M. DICKINSON, O'BRIEN J. ATKINSON.

MINNESOTA.—Vice-President, GORDON E. COLE.

Local Council, REUBEN C. BENTON, JOHN A. LOVELY, HIRAM F. STEVENS.

MISSISSIPPI.—Vice-President, LOCK E. HOUSTON.

Local Council, R. O. REYNOLDS.

MISSOURI.—Vice-President, SHEPARD BARCLAY.

Local Council, HENRY HITCHCOCK, WARWICK HOUGH, EDWARD C. KEHR.

NEBRASKA.—Vice-President, JAMES M. WOOLWORTH.
Local Council, CHARLES F. MANDERSON.

NEW HAMPSHIRE.—Vice-President, WILLIAM S. LADD.
Local Council, CLINTON W. STANLEY, ALBERT S.
WAIT, HENRY B. ATHERTON.

NEW JERSEY.—Vice-President, ANTHONY Q. KEASBEY.
Local Council, WASHINGTON B. WILLIAMS, CHARLES
BORCHERLING, R. WAYNE PARKER.

NEW YORK.—Vice-President, JOHN F. DILLON.
Local Council, EVERETT P. WHEELER, BENJ. A.
WILLIS, ROBERT D. BENEDICT, WM. M. EVARTS,
N. C. MOAK, EDWARD F. BULLARD, JOHN K.
PORTER.

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Local Council, JAMES E. BOYD, JOHN N. STAPLES.

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Local Council, W. W. JOHNSON, RICHARD A. HAR-
RISON, HENRY S. NBAL, HENRY C. RANNEY.

PENNSYLVANIA.—Vice-President, GEORGE W. BIDDLE.
Local Council, HENRY GREEN, GEORGE SHIRAS, JR.,
HUGH M. NORTH, ROBERT E. MONAGHAN, WIL-
LIAM A. PORTER, ANDREW T. McCLINTOCK.

RHODE ISLAND.—Vice-President, WILLIAM P. SHEFFIELD.
Local Council, BENJAMIN F. THURSTON, ABRAHAM
PAYNE.

SOUTH CAROLINA.—Vice-President, HENRY E. YOUNG.
Local Council, C. H. SIMONTON, ROBERT W. BOYD.

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Local Council, JOHN M. GAUT, HENRY T. ELLETT,
EDMUND COOPER.

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Local Council, WILLIAM J. ROBERTSON, LEIGH R.
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Local Council, WILLIAM F. VILAS, ALFRED L. CARY,
EPHRAIM MARINER.

COMMITTEES.

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SIMEON E. BALDWIN, New Haven, Connecticut.
HENRY HITCHCOCK, St. Louis, Missouri.
GEORGE TUCKER BISPHAM, Philadelphia, Pennsylvania.
SKIPWITH WILMER, Baltimore, Maryland.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

RUFUS KING, Cincinnati, Ohio.
GEORGE W. BIDDLE, Philadelphia, Pennsylvania.
EDWARD J. PHELPS, Burlington, Vermont.
RICHARD T. MERRICK, Washington, District of Columbia.
WALTER B. HILL, Macon, Georgia.

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CARLETON HUNT, New Orleans, Louisiana.
HENRY STOCKBRIDGE, Baltimore, Maryland.
U. M. ROSE, Little Rock, Arkansas.
GEORGE HOADLY, Cincinnati, Ohio.
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GEORGE A. MERCER, Savannah, Georgia.
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WILLIAM J. ROBERTSON, Charlottesville, Virginia.

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JAMES O. BROADHEAD, St. Louis, Missouri.
JOHN E. WARD, New York, New York.
WILLIAM M. EVARTS, New York, New York.

ON PUBLICATIONS.

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CHARLES S. BRADLEY, Providence, Rhode Island.
FRANCIS RAWLE, Philadelphia, Pennsylvania.
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DANIEL ROBERTS, Burlington, Vermont.

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EVERETT P. WHEELER, New York, New York.
HENRY HITCHCOCK, St. Louis, Missouri.

ALPHABETICAL

LIST OF MEMBERS—1883-84.

ACKLEN, JOSEPH H.,	Franklin, La.
ADAMS, SAMUEL B.,	Savannah, Ga.
ADAMS, SHERMAN W.,	Hartford, Conn.
ALBERT, TALBOT J.,	Baltimore, Md.
ALDRICH, CHARLES H.,	Fort Wayne, Ind.
ALLEN, ROBERT, Jr.,	Red Bank, N. J.
ALLEN, STILLMAN B.,	Boston, Mass.
ALEXANDER, JULIAN J.,	Baltimore, Md.
ALLISON, ANDREW,	Nashville, Tenn.
ANDERSON, CLIFFORD,	Macon, Ga.
APPLEBY, GEORGE F.,	Washington, D. C.
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ARNOLD, MICHAEL,	Philadelphia, Pa.
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ATHERTON, THOMAS H.,	Wilkesbarre, Pa.
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BACON, AUGUSTUS O.,	Macon, Ga.
BAER, GEORGE F.,	Reading, Pa.
BACOT, T. W.,	Charleston, S. C.
BAKER, ASHLEY D. L.,	Gloversville, N. Y.
BAKER, FREDERICK A.,	Detroit, Mich.
BAKER, JOHN H.,	Goshen, Ind.
BAKER, ORVILLE D.,	Augusta, Ga.
BAKER, WILLIAM,	Toledo, O.
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BALDWIN, CHARLES C.,	Cleveland, O.
BALDWIN, G. W.,	Boston, Mass.
BALDWIN, HENRY, JR.,	Philadelphia, Pa.
BALDWIN, SIMEON E.,	New Haven, Conn.

BALLENGER, W. P.,	Galveston, Tex.
BARCLAY, SHEPARD,	St. Louis, Mo.
BARKER, THEODORE G.,	Charleston, S. C.
BARROW, POPE,	Athens, Ga.
BARTLETT, CHARLES L.,	Macon, Ga.
BARTLETT, SIDNEY,	Boston, Mass.
BATE, H. R.,	Covington, Tenn.
BAUSMAN, J. W. B.,	Lancaster, Pa.
BAYARD, THOMAS F.,	Wilmington, Del.
BAYNE, THOMAS L.,	New Orleans, La.
BEASTEN, CHARLES, JR.,	Baltimore, Md.
BELL, C. U.,	Lawrence, Mass.
BENEDICT, ROBERT D.,	New York, N. Y.
BENEDICT, W. S.,	New Orleans, La.
BENET, WILLIAM C.,	Abbeville, S. C.
BENJAMIN, M. W.,	Little Rock, Ark.
BENNETT, EDMUND H.,	Taunton, Mass.
BENTON, REUBEN C.,	Minneapolis, Minn.
BIDDLE, GEORGE W.,	Philadelphia, Pa.
BINGHAM, HARRY,	Littleton, N. H.
BISPHAM, GEORGE TUCKER,	Philadelphia, Pa.
BISHOP, ROBERT R.,	Boston, Mass.
BLACK, J. C.,	Danville, Ill.
BLACK, J. C. C.,	Augusta, Ga.
BLANC, SAMUEL P.,	New Orleans, La.
BOGGESE, CALEB,	Clarksburg, W. Va.
BONAPARTE, CHARLES J.,	Baltimore, Md.
BOND, S. R.,	Washington, D. C.
BONNEY, C. C.,	Chicago, Ill.
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BOYD, JAMES E.,	Greensboro, N. C.
BOYD, ROBERT W.,	Darlington, S. C.
BRADLEY, CHARLES S.,	Providence, R. I.
BRAGG, WALTER L.,	Montgomery, Ala.
BRALEY, HENRY K.,	Fall River, Mass.
BREAUX, G. A.,	New Orleans, La.
BRECK, CHARLES DU PONT,	Scranton, Pa.
BRECKENRIDGE, SAMUEL M.,	St. Louis, Mo.
BRECKINRIDGE, WM. C. P.,	Lexington, Ky.
BREDIN, JAMES,	Butler, Pa.
BREWSTER, LYMAN D.,	Danbury, Conn.
BRICE, A. G.,	New Orleans, La.

BRIDGERS, JOHN L., JR.,	Tarboro, N. C.
BRISTOW, BENJAMIN H.,	New York, N. Y.
BROADHEAD, JAMES O.,	St. Louis, Mo.
BROOKS, FRANCIS A.,	Boston, Mass.
BROWN, HENRY B.,	Detroit, Mich.
BROWN, JOHN C.,	Pulaski, Tenn.
BROWN, JOHN MASON,	Louisville, Ky.
BROWN, SEBASTIAN,	Baltimore, Md.
BRUNDAGE, A. R.,	Wilkesbarre, Pa.
BRUSH, CHARLES H.,	New York, N. Y.
BRYAN, JAMES W.,	Covington, Ky.
BUCK, J. JAY,	Emporia, Kan.
BUCKNER, B. F.,	Lexington, Ky.
BUELL, DAVID,	Greenville, Ala.
BULLARD, E. F.,	Saratoga Springs, N. Y.
BULLOCK, A. G.,	Worcester, Mass.
BURKE, STEVENSON,	Cleveland, O.
BURNETT, HENRY L.,	New York, N. Y.
BURNHAM, HENRY E.,	Manchester, N. H.
BUTLER, JOHN M.,	Indianapolis, Ind.
BUTLER, WM. ALLEN,	New York, N. Y.
BUTLER, WM. ALLEN, JR.,	New York, N. Y.
CAMPBELL, JAMES B.,	Charleston, S. C.
CAMPBELL, JOHN A.,	New Cumberland, W. Va.
CARROLL, WILLIAM H.,	Memphis, Tenn.
CARY, ALFRED L.,	Milwaukee, Wis.
CARY, JOHN W.,	Milwaukee, Wis.
CARY, MELBERT B.,	Milwaukee, Wis.
CHANDLER, ALFRED D.,	Boston, Mass.
CHARLTON, WALTER G.,	Savannah, Ga.
CHERRINGTON, THOMAS,	Ironton, O.
CHISHOLM, WALTER S.,	Savannah, Ga.
CLARK, GAYLORD B.,	Mobile, Ala.
CLARK, JAMES OLIVER,	New York, N. Y.
CLARK, THOMAS ALLEN,	New York, N. Y.
CLEAVES, NATHAN,	Portland, Me.
CLIFFORD, CHARLES W.,	New Bedford, Mass.
CLOPTON, DAVID,	Montgomery, Ala.
COHN, M. M.,	Little Rock, Ark.
COLE, GORDON E.,	Faribault, Minn.
COLE, W. L.,	Parkersburg, W. Va.
COOLEY, THOMAS M.,	Ann Arbor, Mich.

COLLIER, M. DWIGHT,	St. Louis, Mo.
COLLINS, PATRICK A.,	Boston, Mass.
COLSTON, EDWARD,	Cincinnati, O.
COOPER, C. P.,	Jacksonville, Fla.
COOPER, EDMUND,	Shelbyville, Tenn.
COOPER, JOHN C.,	Jacksonville, Fla.
COOPER, WILLIAM F.,	Nashville, Tenn.
COWEN, JOHN K.,	Baltimore, Md.
COX, S. S.,	New York, N. Y.
CRAIGHEAD, S.,	Dayton, O.
CRAPO, WILLIAM W.,	New Bedford, Mass.
CRAWFORD, GEORGE L.,	Philadelphia, Pa.
CRAWFORD, W. L.,	Dallas, Tex.
CROSS, E. J. D.,	Baltimore, Md.
CROWELL, CHARLES E.,	New York, N. Y.
CULLOM, SHELBY M.,	Springfield, Ill.
CUMMING, JOSEPH B.,	Augusta, Ga.
CUNNINGHAM, HENRY C.,	Savannah, Ga.
CURRIER, FRANK D.,	E. Canaan, N. H.
CURTIS, BENJAMIN ROBBINS,	Boston, Mass.
CURTIS, JULIUS B.,	Stamford, Conn.
DARGAN, E. KEITH,	Darlington C. H., S. C.
DARLING, EDWARD P.,	Wilkesbarre, Pa.
DARLING, J. VAUGHAN,	Wilkesbarre, Pa.
DARLINGTON, JOSEPH J.,	Washington, D. C.
DAUGHERTY, M. A.,	Columbus, O.
DAVIDSON, THOMAS F.,	Covington, Ind.
DAVIDSON, WILLIAM A.,	Cincinnati, O.
DAVIE, GEORGE M.,	Louisville, Ky.
DAVIS, DAVID,	Bloomington, Ill.
DAVIS, JOHN J.,	Clarksburg, W. Va.
DAVISON, CHARLES A.,	New York, N. Y.
DEADY, M. P.,	Portland, Oregon.
DENT, THOMAS,	Chicago, Ill.
DENÈGRE, GEORGE,	New Orleans, La.
DESTY, ROBERT,	St. Paul, Minn.
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DICKINSON, M. F., JR.,	Boston, Mass.
DICKINSON, S. MEREDITH,	Trenton, N. J.
DILLON, JOHN F.,	New York, N. Y.
DORSHEIMER, WILLIAM,	New York, N. Y.
DU BIGNON, FLEMING G.,	Milledgeville, Ga.

DUDLEY, JAMES M.,	. . . . .	Johnstown, N. Y.
DUFFIELD, HENRY M.,	. . . . .	Detroit, Mich.
DUNHAM, CHARLES,	. . . . .	Geneseo, Ill.
DU VAL, BENJAMIN T.,	. . . . .	Fort Smith, Ark.
DYER, AZRO,	. . . . .	Evansville, Ind.
EATON, SHERBURNE B.,	. . . . .	New York, N. Y.
EARLE, WILLIAM E.,	. . . . .	Washington, D. C.
EDSALL, JAMES K.,	. . . . .	Chicago, Ill.
EDWARDS, B. S.,	. . . . .	Springfield, Ill.
ELLETT, HENRY T.,	. . . . .	Memphis, Tenn.
ELLMAKER, NATHANIEL,	. . . . .	Lancaster, Pa.
EMOTT, JAMES,	. . . . .	New York, N. Y.
ENDICOTT, WILLIAM C.,	. . . . .	Salem, Mass.
ENSIGN, JOSIAH D.,	. . . . .	Duluth, Minn.
ESTES, BEDFORD M.,	. . . . .	Memphis, Tenn.
EVARTS, WILLIAM M.,	. . . . .	New York, N. Y.
FAIRBANKS, CHARLES W.,	. . . . .	Indianapolis, Ind.
FALLIGANT, ROBERT,	. . . . .	Savannah, Ga.
FARRAR, EDGAR H.,	. . . . .	New Orleans, La.
FEIGHAN, JOHN W.,	. . . . .	Emporia, Kan.
FELLOWS, JOSEPH W.,	. . . . .	Manchester, N. H.
FENTRESS, JAMES,	. . . . .	Bolivar, Tenn.
FERGUSON, E. A.,	. . . . .	Cincinnati, O.
FISHBACK, W. P.,	. . . . .	Indianapolis, Ind.
FISHER, WILLIAM A.,	. . . . .	Baltimore, Md.
FLEMMING, JAMES,	. . . . .	Jersey City, N. J.
FORBUSH, GEORGE S.,	Boston, Mass.
FORCE, MANNING F.,	Cincinnati, O.
FOSTER, DWIGHT,	Boston, Mass.
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FOX, WILLIAM H.,	Taunton, Mass.
FRANKLIN, THOMAS E.,	Lancaster, Pa.
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FRENCH, WILLIAM B.,	Boston, Mass.
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GANTT, THOMAS T.,	St. Louis, Mo.
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GARRARD, WILLIAM,	Savannah, Ga.
GARRETSON, A. Q.,	Jersey City, N. J.
GASTON, WILLIAM,	Boston, Mass.

GATES, Q. A.,	Wilkesbarre, Pa.
GAUT, JOHN M.,	Nashville, Tenn.
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GILLIS, JAMES A.,	Salem, Mass.
GILMORE, THOMAS,	New Orleans, La.
GOBLE, L. SPENCER,	Newark, N. J.
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GOULD, A. P.,	Thomaston, Me.
GOULD, O. B.,	Winona, Minn.
GRESHAM, WALTER,	Galveston, Tex.
GRESHAM, WALTER Q.,	Indianapolis, Ind.
GRANGER, M. M.,	Zanesville, O.
GREEN, EDWIN P.,	Akron, O.
GREEN, HENRY,	Easton, Pa.
GREGORY, J. C.,	Madison, Wis.
GRIFFIN, LEVI T.,	Detroit, Mich.
GUNCKEL, LEWIS B.,	Dayton, O.
GRISWOLD, SENECA O.,	Cleveland, O.
GROESBECK, WILLIAM S.,	Cincinnati, O.
GROSS, JOSEPH P.,	Philadelphia, Pa.
GROSS, WILLIAM L.,	Springfield, Ill.
GRUBB, IGNATIUS C.,	Wilmington, Del.
GUTHRIE, GEORGE W.,	Pittsburg, Pa.
HAHN, WILLIAM J.,	Minneapolis, Minn.
HALE, MATTHEW,	Albany, N. Y.
HALL, JOHN J.,	Akron, O.
HAISEY, JEREMIAH,	Norwich, Conn.
HAMERSLEY, WILLIAM,	Hartford, Conn.
HAMILTON, ALEXANDER,	Petersburg, Va.
HAMILTON, GEORGE EARNEST,	Washington, D. C.
HAMILTON, JOHN M.,	Springfield, Ill.
HAMMOND, N. J.,	Atlanta, Ga.
HAMMOND, WILLIAM G.,	St. Louis, Mo.
HANDLEY, JOHN,	Scranton, Pa.
HANDY, JOHN H.,	Baltimore, Md.
HANNA, JOHN F.,	Washington, D. C.
HARRISON, BENJAMIN,	Indianapolis, Ind.
HARRISON, RICHARD A.,	Columbus, O.
HASKELL, THOMAS H.,	Portland, Me.
HATHEWAY, SIMON W.,	Boston, Mass.
HAY, MALCOLM,	Pittsburg, Pa.

HAYNES, DANIEL A.,	Dayton, O.
HEMENWAY, ALFRED,	Boston, Mass.
HEMPHILL, JOSEPH,	West Chester, Pa.
HENDERSON, J. B.,	St. Louis, Mo.
HENDRICKS, A. W.,	Indianapolis, Ind.
HENDRICKS, THOMAS A.,	Indianapolis, Ind.
HERBERT, JOHN W., JR.,	Jersey City, N. J.
HEREFORD, FRANK,	Union, W. Va.
HEVERIN, JAMES H.,	Philadelphia, Pa.
HIGGINS, ANTHONY,	Wilmington, Del.
HILL, WALTER B.,	Macon, Ga.
HINES, C. C.,	Indianapolis, Ind.
HINKLEY, EDWARD OTIS,	Baltimore, Md.
HINCKLEY, LYMAN G.,	Chelsea, Vt.
HITCHCOCK, HENRY,	St. Louis, Mo.
HOADLEY, GEORGE,	Cincinnati, O.
HODGE, NOAH,	Akron, O.
HOFFMAN, CHARLES W.,	Washington, D. C.
HOLMES, GEORGE F.,	Portland, Me.
HOOKER, DAVID G.,	Milwaukee, Wis.
HORD, OSCAR B.,	Indianapolis, Ind.
HORNER, JOHN J.,	Helena, Ark.
HOUGH, WARWICK,	Jefferson City, Mo.
HOUK, GEORGE W.,	Dayton, O.
HOUSTON, LOCK E.,	Aberdeen, Miss.
HOWE, ARCHIBALD M.,	Boston, Mass.
HOWE, W. W.,	New Orleans, La.
HOWRY, CHARLES B.,	Oxford, Miss.
HUBBARD, CHARLES EUSTIS,	Boston, Mass.
HUDD, THOMAS R.,	Green Bay, Wis.
HUEY, SAMUEL B.,	Philadelphia, Pa.
HUNT, CARLETON,	New Orleans, La.
HURD, FRANCIS W.,	Boston, Mass.
HUTCHINS, WALDO,	New York, N. Y.
HUTCHINSON, JOHN A.,	Parkersburg, W. Va.
HYDE, ALVAN P.,	Hartford, Conn.
ISAACS, M. S.,	New York, N. Y.
JACKSON, HENRY,	Atlanta, Ga.
JENKINS, JAMES G.,	Milwaukee, Wis.
JEWETT, HUGH J.,	New York, N. Y.
JOHNSON, EDGAR M.,	Cincinnati, O.
JOHNSON, WILLIAM W.,	Ironton, O.

JOHNSON, WILLIAM E.,	Woodstock, Vt.
JOHNSTON, JAMES M.,	Washington, D. C.
JOHNSTON, SANDERS W.,	Washington, D. C.
JONES, CHARLES C., JR.,	Augusta, Ga.
JONES, CHARLES W.,	Pensacola, Fla.
JONES, ISAAC D.,	Baltimore, Md.
JONES, LEONARD A.,	Boston, Mass.
JORDAN, ISAAC M.,	Cincinnati, O.
JUDSON, FREDERICK N.,	St. Louis, Mo.
KEASBEY, ANTHONY Q.,	Newark, N. J.
KEASBEY, GEORGE M.,	Newark, N. J.
KEHR, EDWARD C.,	St. Louis, Mo.
KELLOGG, STEPHEN W.,	Waterbury, Conn.
KENNARD, JOHN H.,	New Orleans, La.
KENT, CHARLES A.,	Detroit, Mich.
KEOGH, THOMAS B.,	Greensboro, N. C.
KERNAN, FRANCIS,	Utica, N. Y.
KING, RUFUS,	Cincinnati, O.
KINGSBURY, FREDERICK J.,	Waterbury, Conn.
KINNEY, THOMAS T.,	Newark, N. J.
KIRCHNER, OTTO,	Detroit, Mich.
KNIGHT, EDWARD B.,	Charleston, W. Va.
KNOTT, A. LEO,	Baltimore, Md.
KOERNER, GUSTAVE,	Belleville, Ill.
KOHLER, JACOB A.,	Akron, O.
KRUTTSCHNITT, ERNEST B.,	New Orleans, La.
KULP, GEORGE B.,	Wilkesbarre, Pa.
LADD, NATH. W.,	Boston, Mass.
LADD, WILLIAM S.,	Lancaster, N. H.
LAMBERTON, C. L.,	Wilkesbarre, Pa.
LANCASTER, CHARLES C.,	Washington, D. C.
LATHROP, GARDINER,	Kansas City, Mo.
LATROBE, JOHN H. B.,	Baltimore, Md.
LAWRENCE, L. L.,	Burlington, Vt.
LAWTON, ALEXANDER R.,	Savannah, Ga.
LEAR, GEORGE,	Doylestown, Pa.
LEEDS, CHARLES C.,	New York, N. Y.
LEGENDRE, JAMES,	New Orleans, La.
LEIGH, JOSEPH E.,	Columbus, Miss.
LEVI, ALBERT L.,	Minneapolis, Minn.
LIBBY, CHARLES F.,	Portland, Me.
LISTER, CHARLES C.,	Philadelphia, Pa.

LITTLE, WILLIAM E.,	Tunkhannock, Pa.
LIVINGSTON, J. B.,	Lancaster, Pa.
LOGAN, THOMAS A.,	Cincinnati, O.
LOVELY, JOHN A.,	Albert Lea, Minn.
LUCAS, SOLOMON,	Norwich, Conn.
LUCKENBACH, W. D.,	Allentown, Pa.
LYON, R. F.,	Macon, Ga.
MACFARLAND, W. W.,	New York, N. Y.
MACKALL, WILLIAM W., JR.,	Savannah, Ga.
MACVEAGH, WAYNE,	Philadelphia, Pa.
MADILL, GEORGE A.,	St. Louis, Mo.
MANDERSON, CHARLES F.,	Omaha, Neb.
MARINER, EPHRAIM,	Milwaukee, Wis.
MARSH, FAYETTE,	Stillwater, Minn.
MARSHALL, JOSHUA N.,	Lowell, Mass.
MARSHALL, CHARLES,	Baltimore, Md.
MARSTON, GILMAN,	Exeter, N. H.
MARSTON, GEORGE,	New Bedford, Mass.
MASON, EDWARD G.,	Chicago, Ill.
MASON, JAMES,	Cleveland, O.
MASON, JOHN T. (JOHN T. MASON, R.),	Baltimore, Md.
MATHEWS, ALBERT,	New York, N. Y.
MATTHEWS, STANLEY,	Cincinnati, O.
MEDDAUGH, ELIJAH W.,	Detroit, Mich.
MELDRIM, P. W.,	Savannah, Ga.
MELOY, WILLIAM A.,	Washington, D. C.
MERCER GEORGE A.,	Savannah, Ga.
MERCER, GEORGE G.,	Philadelphia, Pa.
MERRICK, EDWIN T.,	New Orleans, La.
MERRICK, RICHARD T.,	Washington, D. C.
METZGER, THOMAS B.,	Allentown, Pa.
MERWIN, ELIAS,	Boston, Mass.
MILLER, FRANK H.,	Augusta, Ga.
MILLER, H. C.,	New Orleans, La.
MILLER, N. DU BOIS,	Philadelphia, Pa.
MITCHELL, JAMES T.,	Philadelphia, Pa.
MITCHELL, JOHN M.,	Concord, N. H.
MITCHELL, JOSEPH A. S.,	Goshen, Ind.
MOAK, N. C.,	Albany, N. Y.
MONAGHAN, ROBERT E.,	West Chester, Pa.
MOORE, JOHN M.,	Little Rock, Ark.
MOORE, GEORGE F.,	Montgomery, Ala.

MOORE, J. Z.,	Owensboro, Ky.
MOORMAN, H. C.,	Somerville, Tenn.
MORGAN, ROBERT J.,	Memphis, Tenn.
MORRIS, M. F.,	Washington, D. C.
MORRIS, S. W.,	Ironton, O.
MORSE, A. PORTER,	Washington, D. C.
MOULTON, S. W.,	Shelbyville, Ill.
MUNFORD, JAMES E.,	St. Louis, Mo.
MUNGER, WARREN,	Dayton, O.
MONROE, WILLIAM A.,	Boston, Mass.
MURPHY, D. F.,	Washington, D. C.
MURPHY, THEODORE D.,	Woodstock, Ill.
MUZZEY, HENRY W.,	Boston, Mass.
MYERS, JAMES J.,	Boston, Mass.
MCCALEB, E. HOWARD,	New Orleans, La.
MCCAMMON, JOSEPH K.,	Washington, D. C.
MCCARTER, THOMAS N.,	Newark, N. J.
MCCARTNEY, JAMES,	Springfield, Ill.
MCCCLINTOCK, ANDREW T.,	Wilkesbarre, Pa.
MCCCLINTOCK, W. T.,	Chillicothe, O.
MCCRADY, EDWARD, JR.,	Charleston, S. C.
MCCULLOUGH, JOHN G.,	N. Bennington, Vt.
MCDONALD, JOSEPH E.,	Indianapolis, Ind.
McFARLAND, BAXTER,	Aberdeen, Miss.
McFARLAND, L. B.,	Memphis, Tenn.
McNEAL, ALBERT T.,	Bolivar, Tenn.
NASH, STEPHEN P.,	New York, N. Y.
NEBEKER, LUCAS,	Covington, Ind.
NELSON, HOMER A.,	Poughkeepsie, N. Y.
NICOLL, DELANCEY,	New York, N. Y.
NOBLE, JOHN W.,	St. Louis, Mo.
NORTH, E. D.,	Lancaster, Pa.
NORTH, HUGH M.,	Columbia, Pa.
OLMSTEAD, AARON B.,	Saratoga Springs, N. Y.
ORR, J. A.,	Columbus, O.
OUTERBRIDGE, ALBERT A.,	Philadelphia, Pa.
OVIATT, EDWARD,	Akron, O.
OWENS, GEORGE W.,	Savannah, Ga.
PAGE, HENRY F.,	Circleville, O.
PAGE, LEGH R.,	Richmond, Va.
PALMER, HENRY W.,	Wilkesbarre, Pa.
PALMER, JOHN M.,	Springfield, Ill.

PARDEE, DON A.,	New Orleans, La.
PARDEE, HENRY E.,	New Haven, Conn.
PARKER, ALTON B.,	Kingston, N. Y.
PARKER, AMASA J.,	Albany, N. Y.,
PARKER, CORTLANDT,	Newark, N. J.
PARKER, R. WAYNE,	Newark, N. J.
PATTERSON, C. STUART,	Philadelphia, Pa.
PAUL, NORMAN,	Woodstock, Vt.
PAYNE, ABRAHAM,	Providence, R. I.
PEABODY, CHARLES A.,	New York, N. Y.
PEABODY, CHARLES A., JR.,	New York, N. Y.
PECKHAM, FRANCIS B.,	Newport, R. I.
PENNYPACKER, CHARLES H.,	West Chester, Pa.
PENNYPACKER, SAMUEL W.,	Philadelphia, Pa.
PERKINS, SAMUEL C.,	Philadelphia, Pa.
PERRY, JOHN H.,	Southport, Conn.
PETTIT, SILAS W.,	Philadelphia, Pa.
PHELPS, EDWARD J.,	Burlington, O.
PHELPS, WM. WALTER,	New York, N. Y.
PHILLIPS, GILBERT W.,	Putnam, Conn.
PIERCE, JAMES O.,	Memphis, Tenn.
PIKE, AUSTIN F.,	Franklin, N. H.
PINNEY, SILAS U.,	Madison, Wis.
PIRTLE, JAMES S.,	Louisville, Ky.
PLATT, JOHNSTON T.,	New Haven, Conn.
POCHÉ, F. P.,	St. James, La.
POLAND, LUKE P.,	St. Johnsbury, Vt.
POND, ASHLEY,	Detroit, Mich.
PORTER, JOHN K.,	New York, N. Y.
PORTER, WILLIAM A.,	Philadelphia, Pa.
PRESTON, WILLIAM,	Lexington, Ky.
PRICE, J. SERGEANT,	Philadelphia, Pa.
PRICHARD, FRANK P.,	Philadelphia, Pa.
PRIME, RALPH E.,	Yonkers, N. Y.
PROUT, JOHN,	Rutland, Vt.
PRYOR, ROGER A.,	Brooklyn, N. Y.
PUTNAM, HENRY W.,	Boston, Mass.
RANDALL, E. M.,	Jacksonville, Fla.
RANDOLPH, JOSEPH F.,	Jersey City, N. J.
RANNEY, HENRY C.,	Cleveland, O.
RANNEY, RUFUS P.,	Cleveland, O.
RAWLE, FRANCIS,	Philadelphia, Pa.

RAWLE, WM. HENRY,	Philadelphia, Pa.
REED, HENRY,	Philadelphia, Pa.
REYNOLDS, R. O.,	Aberdeen, Miss.
REYNOLDS, SAMUEL H.,	Lancaster, Pa.
RICHARDSON, DANIEL S.,	Lowell, Mass.
RICHARDSON, GEORGE F.,	Lowell, Mass.
RICHEY, AUGUSTUS G.,	Trenton, N. J.
RIGGS, JAMES M.,	Winchester, Ill.
ROBB, SAMUEL,	Philadelphia, Pa.
ROBERTS, DANIEL,	Burlington, Vt.
ROBERTS, JOSEPH K., JR.,	Upper Marlboro, Md.
ROBERTS, R. BIDDLE,	Chicago, Ill.
ROBERTSON, A. H.,	Baltimore, Md.
ROBERTSON, WILLIAM J.,	Charlottesville, Va.
ROGERS, GEORGE W.,	Norristown, Pa.
ROGERS, SHERMAN S.,	Buffalo, N. Y.
ROMEYN, THEODORE,	Detroit, Mich.
ROSE, U. M.,	Little Rock, Ark.
RUSSELL, ALFRED,	Detroit, Mich.
RUSSELL, WILLIAM G.,	Boston, Mass.
RUSSELL, W. H. H.,	New York, N. Y.
RUSSELL, TALCOTT H.,	New Haven, Conn.
SANBORN, JOHN B.,	St. Paul, Minn.
SANBORN, WALTER H.,	St. Paul, Minn.
SANDERS, DALLAS,	Philadelphia, Pa.
SCHENCK, ABRAM V.,	New Brunswick, N. J.
SCHOONMAKER, AUGUSTUS, JR.,	Kingston, N. Y.
SCOTT, C. S.,	Lexington, Ky.
SCUDDER, HENRY J.,	New York, N. Y.
SEARLES, JASPER N.,	Stillwater, Minn.
SEARS, PHILIP H.,	Boston, Mass.
SEIBERT, W. N.,	New Bloomfield, Pa.
SELDEN, JOHN,	Washington, D. C.
SEMMES, THOMAS J.,	New Orleans, La.
SEYMOUR, EDWARD W.,	Litchfield, Conn.
SHACK, FERDINAND,	New York, N. Y.
SHARP, GEORGE M.,	Baltimore, Md.
SHARP, ISAAC S.,	Philadelphia, Pa.
SHATTUCK, GEORGE O.,	Boston, Mass.
SHAW, R. K.,	Marietta, O.
SHAW, WILLIAM G.,	Burlington, Vt.
SHEFFIELD, WILLIAM P.,	Newport, R. I.

SHEPARD, ELLIOTT F.,	New York, N. Y.
SHERMAN, E. B.,	Chicago, Ill.
SHIPMAN, J. G.,	Belvidere, N. J.
SHIPPEN, JOSEPH,	St. Louis, Mo.
SHIRAS, GEORGE, JR.,	Pittsburg, Pa.
SHIRAS, OLIVER P.,	Dubuque, Ia.
SHIRLEY, JOHN M.,	Andover, N. H.
SHOEMAKER, L. D.,	Wilkesbarre, Pa.
SHOEMAKER, MURRAY C.,	Cincinnati, O.
SIMONTON, C. H.,	Charleston, S. C.
SIMS, W. H.,	Columbus, Miss.
SLAYMAKER, AMOS,	Lancaster, Pa.
SMALL, ALBERT,	Hagerstown, Md.
SMALLEY, B. B.,	Burlington, Vt.
SMITH, CHAUNCEY,	Boston, Mass.
SMITH, HORACE E.,	Albany, N. Y.
SMITH, LUTHER R.,	Mount Sterling, Ala.
SMITH, WALTER GEORGE,	Philadelphia, Pa.
SMYTHE, AUGUSTINE T.,	Charleston, S. C.
SNEED, JOHN L. T.,	Memphis, Tenn.
SOMMERVILLE, J. B.,	Wellsburg, W. Va.
SOUTHARD, CHARLES B.,	Boston, Mass.
SPAULDING, JOHN,	Boston, Mass.
SPRAGUE, E. C.,	Buffalo, N. Y.
SPEIR, GILBERT M., JR.,	New York, N. Y.
STANLEY, CLINTON W.,	Manchester, N. H.
STANTON, LEWIS E.,	Hartford, Conn.
STAPLES, JOHN N.,	Greensboro, N. C.
STEELE, THOMAS,	Ripley, Tenn.
STERNE, SIMON,	New York, N. Y.
STETSON, CHARLES P.,	Bangor, Me.
STEVENS, GEORGE,	Lowell, Mass.
STEVENS, HIRAM F.,	St. Paul, Minn.
STEVENSON, JOHN W.,	Covington, Ky.
STEWART, JOHN,	Chambersburg, Pa.
STEWART, W. F. BAY,	York, Pa.
STICKNEY, ALBERT,	New York, N. Y.
STILLWELL, L.,	Osage Mission, Kan.
STOCKBRIDGE, HENRY,	Baltimore, Md.
STOCKDALE, F. S.,	Cuero, Tex.
STOREY, MOORFIELD,	Boston, Mass.
STORROW, JAMES J.,	Boston, Mass.

STORRS, EMERY A.,	Chicago, Ill.
STREET, ROBERT G.,	Galveston, Tex.
STROUT, A. A.,	Portland, Me.
STURGES, E. B.,	Scranton, Pa.
SULLIVAN, ALGERNON S.,	New York, N. Y.
SWIFT, M. G. B.,	Fall River, Mass.
TAPPAN, JAMES C.,	Helena, Ark.
TAYLOR, JOHN D.,	New York, N. Y.
TAYLOR, R. S.,	Fort Wayne, Ind.
TEESE, FREDERICK H.,	Newark, N. J.
THOMPSON, SEYMOUR D.,	St. Louis, Mo.
THORNTON, A. R.,	Lexington, Ky.
THURSTON, BENJAMIN F.,	Providence, R. I.
THWEATT, P. O.,	Helena, Ark.
TODD, A. J.,	New York, N. Y.
TOMPKINS, HENRY B.,	Atlanta, Ga.
TOMS, ROBERT P.,	Detroit, Mich.
TORREY, JAY L.,	St. Louis, Mo.
TOWNSEND, WASHINGTON,	West Chester, Pa.
TOWNSEND, WILLIAM K.,	New Haven, Conn.
TROY, D. S.,	Montgomery, Ala.
TRABUE, E. F.,	Louisville, Ky.
TREADWELL, JOHN P.,	Boston, Mass.
TRUMBULL, LYMAN,	Chicago, Ill.
TUCK, SOMERVILLE P.,	New York, N. Y.
TUCKER, J. RANDOLPH,	Lexington, Va.
TUPPER, A. P.,	Middleboro, Vt.
TUTHILL, RICHARD S.,	Chicago, Ill.
UPSON, WILLIAM H.,	Akron, O.
USHER, EDWARD PRESTON,	Boston, Mass.
VANDERPOEL, A. J.,	New York, N. Y.
VAUX, RICHARD,	Philadelphia, Pa.
VENABLE, RICHARD M.,	Baltimore, Md.
VILAS, WILLIAM F.,	Madison, Wis.
VREDENBURGH, JAMES B.,	Jersey City, N. J.
VROOM, GARRET D. W.,	Trenton, N. J.
WADDELL, WILLIAM B.,	West Chester, Pa.
WAEELDER, JACOB,	San Antonio, Tex.
WAGNER, SAMUEL,	Philadelphia, Pa.
WAIT, ALBERT S.,	Newport, N. H.
WALKER, CHARLES J.,	Detroit, Mich.
WALKER, SAMUEL P.,	Memphis, Tenn.

WALKER, W. H.,	Ludlow, Vt.
WARD, JOHN E.,	New York, N. Y.
WARNER, JOSEPH B.,	Boston, Mass.
WATERMAN, A. N.,	Chicago, Ill.
WATROUS, GEORGE H.,	New Haven, Conn.
WAUL, T. N.,	Galveston, Tex.
WEADOCK, THOMAS A. E.,	Bay City, Mich.
WEART, JACOB,	Jersey City, N. J.
WEBB, NATHAN,	Portland, Me.
WEEKS, WILLIAM R.,	Newark, N. J.
WEGG, DAVID S.,	Milwaukee, Wis.
WELLS, H. H.,	Washington, D. C.
WELLS, WILLIAM P.,	Detroit, Mich.
WEST, CHARLES N.,	Savannah, Ga.
WEST, C. S.,	Austin, Tex.
WEST, MAHLON R.,	Hartford, Conn.
WHEELER, EVERETT P.,	New York, N. Y.
WHITFIELD, F. E.,	Corinth, Miss.
WHITTLE, L. N.,	Macon, Ga.
WILLARD, EDWARD N.,	Scranton, Pa.
WILLCOX, W. F.,	Deep River, Conn.
WILLIAMS, EDWARD CALVIN,	Baltimore, Md.
WILLIAMS, WASHINGTON B.,	Jersey City, N. J.
WILLIE, A. H.,	Galveston, Tex.
WILLIS, BENJAMIN A.,	New York, N. Y.
WILLISTON, W. C.,	Redwing, Minn.
WILSON, A. E.,	Louisville, Ky.
WILMER, SKIPWITH,	Baltimore, Md.
WINSLOW, JOHN,	New York, N. Y.
WILSON, F. A.,	Bangor, Me.
WILSON, JOHN R.,	Indianapolis, Ind.
WILSON, NATHANIEL,	Washington, D. C.
WILSON, THOMAS,	Winona, Minn.
WILSON, WILLIAM C.,	Lafayette, Ind.
WILTBANK, WILLIAM W.,	Philadelphia, Pa.
WINKLER, FREDERICK C.,	Milwaukee, Wis.
WITHROW, JAMES E.,	St. Louis, Mo.
WOLVERTON, SIMON P.,	Sunbury, Pa.
WOOD, R. H.,	Bolivar, Tenn.
WOODRUFF, GEORGE M.,	Litchfield, Conn.
WOODRUFF, ROBERT S.,	Trenton, N. J.
WOODWARD, CHARLES F.,	Bangor, Me.

ALPHABETICAL LIST OF MEMBERS.

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WOODWARD, STANLEY,	Wilkesbarre, Pa.
WOOLWORTH, J. M.,	Omaha, Neb.
WRIGHT, GEORGE G.,	Des Moines, Ia.
YOUNG, EDMOND S.,	.	.	.	.	Dayton, O.
YOUNG, GEORGE B.,	.	.	.	.	St. Paul, Minn.
YOUNG, HENRY E.,	.	.	.	.	Charleston, S. C.

MEMBERS—AUGUST, 1883-1884.

ALABAMA.

BRAGG, WALTER L.,	.	.	.	Montgomery.
BUELL, DAVID,	.	.	.	Greenville.
CLARK, GAYLORD B.,	.	.	.	Mobile.
CLOPTON, DAVID,	.	.	.	Montgomery.
MOORE, GEORGE F.,	.	.	.	Montgomery.
SMITH, LUTHER R.,	.	.	.	Mount Sterling.
TROY, D. S.,	.	.	.	Montgomery.

ARKANSAS.

BENJAMIN, M. W.,	.	.	.	Little Rock.
COHN, M. M.,	.	.	.	Little Rock.
DU VAL, BENJAMIN T.,	.	.	.	Fort Smith.
HORNER, JOHN J.,	.	.	.	Helena.
MOORE, JOHN M.,	.	.	.	Little Rock.
ROSE, U. M.,	.	.	.	Little Rock.
TAPPAN, JAMES C.,	.	.	.	Helena.
THWEATT, P. O.,	.	.	.	Helena.

CONNECTICUT.

ADAMS, SHERMAN W.,	.	.	.	Hartford.
BALDWIN, SIMEON E.,	.	.	.	New Haven.
BREWSTER, LYMAN D.,	.	.	.	Danbury.
CURTIS, JULIUS B.,	.	.	.	Stamford.
HAMERSLEY, WILLIAM,	.	.	.	Hartford.
HAISEY, JEREMIAH,	.	.	.	Norwich.
HYDE, ALVAN P.,	.	.	.	Hartford.
KELLOGG, STEPHEN W.,	.	.	.	Waterbury.
KINGSBURY, FREDERICK J.,	.	.	.	Waterbury.
LUCAS, SOLOMON,	.	.	.	Norwich.
PARDEE, HENRY E.,	.	.	.	New Haven.
PERRY, JOHN H.,	.	.	.	Southport.
PHILLIPS, GILBERT W.,	.	.	.	Putnam.
PLATT, JOHNSON T.,	.	.	.	New Haven.
RUSSELL, TALCOTT H.,	.	.	.	New Haven.

CONNECTICUT—Continued.

SEYMOUR, EDWARD W.,	.	.	.	Litchfield.
STANTON, LEWIS E.,	.	.	.	Hartford.
TOWNSEND, WILLIAM K.,	.	.	.	New Haven.
WATROUS, GEORGE H.,	.	.	.	New Haven.
WEST, MAHLON R.,	.	.	.	Hartford.
WILLCOX, W. F.,	.	.	.	Deep River.
WOODRUFF, GEORGE M.,	.	.	.	Litchfield.

DELAWARE.

BAYARD, THOMAS F.,	.	.	.	Wilmington.
GRUBB, IGNATIUS C.,	.	.	.	Wilmington.
HIGGINS, ANTHONY,	.	.	.	Wilmington.

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APPLEBY, GEORGE F.,	.	.	.	Washington.
ASHTON, J. HUBLEY,	.	.	.	Washington.
BOND, S. R.,	.	.	.	Washington.
DARLINGTON, JOSEPH J.,	.	.	.	Washington.
EARLE, WILLIAM E.,	.	.	.	Washington.
GARNETT, HENRY WISE,	.	.	.	Washington.
HAMILTON, GEORGE EARNEST,	.	.	.	Washington.
HANNA, JOHN F.,	.	.	.	Washington.
HOFFMAN, CHARLES W.,	.	.	.	Washington.
JOHNSTON, JAMES M.,	.	.	.	Washington.
JOHNSTON, SANDERS W.,	.	.	.	Washington.
LANCASTER, CHARLES C.,	.	.	.	Washington.
McCAMMON, JOSEPH K.,	.	.	.	Washington.
MELOY, WILLIAM A.,	.	.	.	Washington.
MERRICK, RICHARD T.,	.	.	.	Washington.
MORRIS, M. F.,	.	.	.	Washington.
MORSE, A. PORTER,	.	.	.	Washington.
MURPHY, D. F.,	.	.	.	Washington.
SELDEN, JOHN,	.	.	.	Washington.
WELLS, H. H.,	.	.	.	Washington.
WILSON, NATHANIEL,	.	.	.	Washington.

FLORIDA.

COOPER, C. P.,	.	.	.	Jacksonville.
COOPER, JOHN C.,	.	.	.	Jacksonville.
JONES, CHARLES W.,	.	.	.	Pensacola.
RANDALL, E. M.,	.	.	.	Jacksonville.

GEORGIA.

ADAMS, SAMUEL B.,	Savannah.
ANDERSON, CLIFFORD,	Macon.
BACON, AUGUSTUS O.,	Macon.
BARROW, POPE,	Athens.
BARTLETT, CHARLES L.,	Macon.
BLACK, J. C. C.,	Augusta.
CHARLTON, WALTER G.,	Savannah.
CHISHOLM, WALTER S.,	Savannah.
CUMMING, JOSEPH B.,	Augusta.
CUNNINGHAM, HENRY C.,	Savannah.
DU BIGNON, FLEMING G.,	Milledgeville.
FALLIGANT, ROBERT,	Savannah.
GARRARD, WILLIAM,	Savannah.
HAMMOND, N. J.,	Atlanta.
HILL, WALTER B.,	Macon.
JACKSON, HENRY,	Atlanta.
JONES, CHARLES C., JR.,	Augusta.
LAWTON, ALEXANDER R.,	Savannah.
LYON, R. F.,	Macon.
MACKALL, WILLIAM W., JR.,	Savannah.
MELDRIM, P. W.,	Savannah.
MERCER, GEORGE A.,	Savannah.
MILLER, FRANK H.,	Augusta.
OWENS, GEORGE W.,	Savannah.
TOMPKINS, HENRY B.,	Atlanta.
WEST, CHARLES N.,	Savannah.
WHITTLE, L. N.,	Macon.

ILLINOIS.

ARNOLD, ISAAC N.,	Chicago.
AYER, B. F.,	Chicago.
BLACK, J. C.,	Danville.
BONNEY, C. C.,	Chicago.
CULLOM, SHELBY M.,	Springfield.
DAVIS, DAVID,	Bloomington.
DENT, THOMAS,	Chicago.
DUNHAM, CHARLES,	Geneseo.
EDSALL, JAMES K.,	Chicago.
EDWARDS, B. S.,	Springfield.
GROSS, WILLIAM L.,	Springfield.
HAMILTON, JOHN M.,	Springfield.

ILLINOIS—Continued.

KOERNER, GUSTAVE,	.	.	.	.	Belleville.
MASON, EDWARD G.,	.	.	.	.	Chicago.
MCCARTNEY, JAMES,	.	.	.	.	Springfield.
MOULTON, S. W.,	.	.	.	.	Shelbyville.
MURPHY, THEODORE D.,	.	.	.	.	Woodstock.
ORENDORFF, ALFRED,	.	.	.	.	Springfield.
PALMER, JOHN M.,	.	.	.	.	Springfield.
RIGGS, JAMES M.,	.	.	.	.	Winchester.
ROBERTS, R. BIDDLE,	.	.	.	.	Chicago.
SHERMAN, E. B.,	.	.	.	.	Chicago.
STORRS, EMERY A.,	.	.	.	.	Chicago.
TRUMBULL, LYMAN,	.	.	.	.	Chicago.
TUTHILL, RICHARD S.,	.	.	.	.	Chicago.
WATERMAN, A. N.,	.	.	.	.	Chicago.

INDIANA.

ALDRICH, CHARLES H.,	.	.	.	.	Fort Wayne.
BAKER, JOHN H.,	.	.	.	.	Goshen.
BUTLER, JOHN M.,	.	.	.	.	Indianapolis.
DAVIDSON, THOMAS F.,	.	.	.	.	Covington.
DYER, AZRO,	.	.	.	.	Evansville.
FAIRBANKS, CHARLES W.,	.	.	.	.	Indianapolis.
FISHBACK, W. P.,	.	.	.	.	Indianapolis.
GRESHAM, WALTER Q.,	.	.	.	.	Indianapolis.
HARRISON, BENJAMIN,	.	.	.	.	Indianapolis.
HENDRICKS, A. W.,	.	.	.	.	Indianapolis.
HENDRICKS, THOMAS A.,	.	.	.	.	Indianapolis.
HINES, C. C.,	.	.	.	.	Indianapolis.
HORD, OSCAR B.,	.	.	.	.	Indianapolis.
MCDONALD, JOSEPH E.,	.	.	.	.	Indianapolis.
MITCHELL, JOSEPH A. S.,	.	.	.	.	Goshen.
NEBEKER, LUCAS,	.	.	.	.	Covington.
TAYLOR, R. S.,	.	.	.	.	Fort Wayne.
WILSON, JOHN R.,	.	.	.	.	Indianapolis.
WILSON, WILLIAM C.,	.	.	.	.	Lafayette.

IOWA.

SHIRAS, OLIVER P.,	.	.	.	.	Dubuque.
WRIGHT, GEORGE G.,	.	.	.	.	Des Moines.

KANSAS.

BUCK, J. JAY,	.	.	.	.	Emporia.
FEIGHAN, JOHN W.,	.	.	.	.	Emporia.
STILLWELL, L.,	.	.	.	.	Osage Mission.

KENTUCKY.

BRECKENRIDGE, WM. C. P.,	.	.	.	.	Lexington.
BROWN, JOHN MASON,	.	.	.	.	Louisville.
BRYAN, JAMES W.,	.	.	.	.	Covington.
BUCKNER, B. F.,	.	.	.	.	Lexington.
DAVIE, GEORGE M.,	.	.	.	.	Louisville.
MOORE, J. Z.,	.	.	.	.	Owensboro.
PIRTLE, JAMES S.,	.	.	.	.	Louisville.
PRESTON, WILLIAM,	.	.	.	.	Lexington.
SCOTT, C. S.,	.	.	.	.	Lexington.
STEVENSON, JOHN W.,	.	.	.	.	Covington.
THORNTON, A. R.,	.	.	.	.	Lexington.
TRABUE, E. F.,	.	.	.	.	Louisville.
WILLSON, A. E.,	.	.	.	.	Louisville.

LOUISIANA.

ACKLEN, JOSEPH H.,	.	.	.	.	Franklin.
BAYNE, THOMAS L.,	.	.	.	.	New Orleans.
BENEDICT, W. S.,	.	.	.	.	New Orleans.
BLANC, SAMUEL P.,	.	.	.	.	New Orleans.
BREAUX, G. A.,	.	.	.	.	New Orleans.
BRICE, A. G.,	.	.	.	.	New Orleans.
DENEGRE, GEORGE,	.	.	.	.	New Orleans.
FARRAR, EDGAR H.,	.	.	.	.	New Orleans.
GILMORE, THOMAS,	.	.	.	.	New Orleans.
HOWE, W. W.,	.	.	.	.	New Orleans.
HUNT, CARLETON,	.	.	.	.	New Orleans.
KENNARD, JOHN H.,	.	.	.	.	New Orleans.
KRUTTSCHNITT, ERNEST B.,	.	.	.	.	New Orleans.
LEGENDRE, JAMES,	.	.	.	.	New Orleans.
MCCALEB, E. HOWARD,	.	.	.	.	New Orleans.
MERRICK, EDWIN T.,	.	.	.	.	New Orleans.
MILLER, H. C.,	.	.	.	.	New Orleans.
PARDEE, DON A.,	.	.	.	.	New Orleans.
POCHÉ, F. P.,	.	.	.	.	St. James.
SEMMEs, THOMAS J.,	.	.	.	.	New Orleans.

MAINE.

BAKER, ORVILLE D.,	. . . .	Augusta.
CLEAVES, NATHAN,	. . . .	Portland.
GOULD, A. P.,	. . . .	Thomaston.
HASKELL, THOMAS H.,	. . . .	Portland.
HOLMES, GEORGE F.,	. . . .	Portland.
LIBBY, CHARLES F.,	. . . .	Portland.
STETSON, CHARLES P.,	. . . .	Bangor.
STROUT, A. A.,	. . . .	Portland.
WEBB, NATHAN,	. . . .	Portland.
WILSON, F. A.,	. . . .	Bangor.
WOODWARD, CHARLES F.,	. . . .	Bangor.

MARYLAND.

ALBERT, TALBOT J.,	. . . .	Baltimore.
ALEXANDER, JULIAN J.,	. . . .	Baltimore.
BEASTEN, CHARLES, JR.,	. . . .	Baltimore.
BONAPARTE, CHARLES J.,	. . . .	Baltimore.
BROWN, SEBASTIAN,	. . . .	Baltimore.
COWEN, JOHN K.,	. . . .	Baltimore.
CROSS, E. J. D.,	. . . .	Baltimore.
FISHER, WILLIAM A.,	. . . .	Baltimore.
HANDY, JOHN H.,	. . . .	Baltimore.
HINKLEY, EDWARD OTIS,	. . . .	Baltimore.
JONES, ISAAC D.,	. . . .	Baltimore.
KNOTT, A. LEO,	. . . .	Baltimore.
LATROBE, JOHN H. B.,	. . . .	Baltimore.
MARSHALL, CHARLES,	. . . .	Baltimore.
MASON, JOHN T. (JOHN T. MASON, R.),	. . . .	Baltimore.
ROBERTS, JOSEPH K., JR.,	. . . .	Upper Marlboro.
ROBERTSON, A. H.,	. . . .	Baltimore.
SHARP, GEORGE M.,	. . . .	Baltimore.
SMALL, ALBERT,	. . . .	Hagerstown.
STOCKBRIDGE, HENRY,	. . . .	Baltimore.
VENABLE, RICHARD M.,	. . . .	Baltimore.
WILLIAMS, EDWARD CALVIN,	. . . .	Baltimore.
WILMER, SKIPWITH,	. . . .	Baltimore.

MASSACHUSETTS.

ALLEN, STILLMAN B.,	. . . .	Boston.
BALDWIN, G. W.,	. . . .	Boston.
BARTLETT, SIDNEY,	. . . .	Boston.

MASSACHUSETTS—Continued.

BELL, C. U.,	Lawrence.
BENNETT, EDMUND H.,	Taunton.
BISHOP, ROBERT R.,	Boston.
BRALEY, HENRY K.,	Fall River.
BROOKS, FRANCIS A.,	Boston.
BULLOCK, A. G.,	Worcester.
CHANDLER, ALFRED D.,	Boston.
CLIFFORD, CHARLES W.,	New Bedford.
COLLINS, PATRICK A.,	Boston.
CRapo, WILLIAM W.,	New Bedford.
CURTIS, BENJAMIN ROBBINS,	Boston.
DICKINSON, M. F., JR.,	Boston.
ENDICOTT, WILLIAM C.,	Salem.
FORBUSH, GEORGE S.,	Boston.
FOSTER, DWIGHT,	Boston.
FOX, WILLIAM H.,	Taunton.
FULLER, HENRY,	Westfield.
FRENCH, WILLIAM B.,	Boston.
GASTON, WILLIAM,	Boston.
GILLIS, JAMES A.,	Salem.
GOODWIN, FRANK,	Boston.
HATHEWAY, SIMON W.,	Boston.
HEMENWAY, ALFRED,	Boston.
HOWE, ARCHIBALD M.,	Boston.
HUBBARD, CHARLES EUSTIS,	Boston.
HURD, FRANCIS W.,	Boston.
JONES, LEONARD A.,	Boston.
LADD, NATH. W.,	Boston.
MARSHALL, JOSHUA N.,	Lowell.
MARSTON, GEORGE,	New Bedford.
MERWIN, ELIAS,	Boston.
MUNROE, WILLIAM A.,	Boston.
MUZZEY, HENRY W.,	Boston.
MYERS, JAMES J.,	Boston.
PUTNAM, HENRY W.,	Boston.
RICHARDSON, DANIEL S.,	Lowell.
RICHARDSON, GEORGE F.,	Lowell.
RUSSELL, WILLIAM G.,	Boston.
SEARS, PHILIP H.,	Boston.
SHATTUCK, GEORGE O.,	Boston.
SMITH CHAUNCEY,	Boston.

MASSACHUSETTS—Continued.

SOUTHARD, CHARLES B.,	.	.	.	Boston.
SPAULDING, JOHN,	.	.	.	Boston.
STEVENS, GEORGE,	.	.	.	Lowell.
STOREY, MOORFIELD,	.	.	.	Lowell.
STORROW, JAMES J.,	.	.	.	Boston.
SWIFT, M. G. B.,	.	.	.	Fall River.
TREADWELL, JOHN P.,	.	.	.	Boston.
USHER, EDWARD PRESTON,	.	.	.	Boston.
WARNER, JOSEPH B.,	.	.	.	Boston.

MICHIGAN.

ATKINSON, O'BRIEN J.,	.	.	.	Port Huron.
BAKER, FREDERICK A.,	.	.	.	Detroit.
BALL, DANIEL H.,	.	.	.	Marquette.
BROWN, HENRY B.,	.	.	.	Detroit.
COOLEY, THOMAS M.,	.	.	.	Ann Arbor.
DICKINSON, DON M.,	.	.	.	Detroit.
DUFFIELD, HENRY M.,	.	.	.	Detroit.
GRIFFIN, LEVI T.,	.	.	.	Detroit.
KENT, CHARLES A.,	.	.	.	Detroit.
KIRCHNER, OTTO,	.	.	.	Detroit.
MEDDAUGH, ELIJAH W.,	.	.	.	Detroit.
POND, ASHLEY,	.	.	.	Detroit.
ROMEYN, THEODORE,	.	.	.	Detroit.
RUSSELL, ALFRED,	.	.	.	Detroit.
TOMS, ROBERT P.,	.	.	.	Detroit.
WALKER, CHARLES J.,	.	.	.	Detroit.
WEADOCK, THOMAS A. E.,	.	.	.	Bay City.
WELLS, WILLIAM P.,	.	.	.	Detroit.

MINNESOTA.

BENTON, REUBEN C.,	.	.	.	Minneapolis.
COLE, GORDON E.,	.	.	.	Faribault.
DESTY, ROBERT,	.	.	.	St. Paul.
ENSIGN, JOSIAH D.,	.	.	.	Duluth.
GOULD, O. B.,	.	.	.	Winona.
HAHN, WILLIAM J.,	.	.	.	Minneapolis.
LEVI, ALBERT L.,	.	.	.	Minneapolis.
LOVELY, JOHN A.,	.	.	.	Albert Lea.
MARSH, FAYETTE,	.	.	.	Stillwater.
SANBORN, JOHN B.,	.	.	.	St. Paul.

MINNESOTA—Continued.

SANBORN, WALTER H.,	.	.	.	St. Paul.
SEARLES, JASPER N.,	.	.	.	Stillwater.
STEVENS, HIRAM F.,	.	.	.	St. Paul.
WILLISTON, W. C.,	.	.	.	Redwing.
WILSON, THOMAS,	.	.	.	Winona.
YOUNG, GEORGE B.,	.	.	.	St. Paul.

MISSISSIPPI.

HOUSTON, LOCK E.,	.	.	.	Aberdeen.
HOWRY, CHARLES B.,	.	.	.	Oxford.
LEIGH, JOSEPH E.,	.	.	.	Columbus.
McFARLAND, BAXTER,	.	.	.	Aberdeen.
ORR, J. A.,	.	.	.	Columbus.
REYNOLDS, R. O.,	.	.	.	Aberdeen.
SIMS, W. H.,	.	.	.	Columbus.
WHITFIELD, F. E.,	.	.	.	Corinth.

MISSOURI.

BARCLAY, SHEPARD,	.	.	.	St. Louis.
BRECKINRIDGE, SAMUEL M.,	.	.	.	St. Louis.
BROADHEAD, JAMES O.,	.	.	.	St. Louis.
COLLIER, M. DWIGHT,	.	.	.	St. Louis.
GALT, SMITH P.,	.	.	.	St. Louis.
GANTT, THOMAS T.,	.	.	.	St. Louis.
HAMMOND, WILLIAM G.,	.	.	.	St. Louis.
HENDERSON, J. B.,	.	.	.	St. Louis.
HITCHCOCK, HENRY,	.	.	.	St. Louis.
HOUGH, WARWICK,	.	.	.	Jefferson City.
JUDSON, FREDERICK N.,	.	.	.	St. Louis.
KEHR, EDWARD C.,	.	.	.	St. Louis.
LATHROP, GARDINER,	.	.	.	Kansas City.
MADILL, GEORGE A.,	.	.	.	St. Louis.
MUNFORD, JAMES E.,	.	.	.	St. Louis.
NOBLE, JOHN W.,	.	.	.	St. Louis.
SHIPPEN, JOSEPH,	.	.	.	St. Louis.
THOMPSON, SEYMOUR D.,	.	.	.	St. Louis.
TORREY, JAY L.,	.	.	.	St. Louis.
WITHROW, JAMES E.,	.	.	.	St. Louis.

NEBRASKA.

MANDERSON, CHARLES F.,	.	.	.	Omaha.
WOOLWORTH, J. M.,	.	.	.	Omaha.

NEW HAMPSHIRE.

ATHERTON, HENRY B.,	.	.	.	Nashua.
BINGHAM, HARRY,	.	.	.	Littleton.
BURNHAM, HENRY E.,	.	.	.	Manchester.
CURRIER, FRANK D.,	.	.	.	E. Canaan.
FELLOWS, JOSEPH W.,	.	.	.	Manchester.
LADD, WILLIAM S.,	.	.	.	Lancaster.
MARSTON, GILMAN,	.	.	.	Exeter.
MITCHELL, JOHN M.,	.	.	.	Concord.
PIKE, AUSTIN F.,	.	.	.	Franklin.
SHIRLEY, JOHN M.,	.	.	.	Andover.
STANLEY, CLINTON W.,	.	.	.	Manchester.
WAIT, ALBERT S.,	.	.	.	Newport.

NEW JERSEY.

ALLEN, ROBERT, JR.,	.	.	.	Red Bank.
BORCHERLING, CHARLES,	.	.	.	Newark.
DICKINSON, S. MEREDITH,	.	.	.	Trenton.
FLEMMING, JAMES,	.	.	.	Jersey City.
GARRETSON, A. Q.,	.	.	.	Jersey City.
GOBLE, L. SPENCER,	.	.	.	Newark.
KEASBEY, ANTHONY Q.,	.	.	.	Newark.
KEASBEY, GEORGE M.,	.	.	.	Newark.
McCARTER, THOMAS N.,	.	.	.	Newark.
PARKER, CORTLANDT,	.	.	.	Newark.
PARKER, R. WAYNE,	.	.	.	Newark.
RANDOLPH, JOSEPH F.,	.	.	.	Jersey City.
RICHEY, AUGUSTUS G.,	.	.	.	Trenton.
SCHENCK, ABRAM V.,	.	.	.	New Brunswick.
SHIPMAN, J. G.,	.	.	.	Belvidere.
TEESE, FREDERICK H.,	.	.	.	Newark.
VREDENBURGH, JAMES B.,	.	.	.	Jersey City.
VROOM, GARRET D. W.,	.	.	.	Trenton.
WEART, JACOB,	.	.	.	Jersey City.
WEEKS, WILLIAM R.,	.	.	.	Newark.
WILLIAMS, WASHINGTON B.,	.	.	.	Jersey City.
WOODRUFF, ROBERT S.,	.	.	.	Trenton.

NEW YORK.

BAKER, ASHLEY D. L.,	Gloversville.
BENEDICT, ROBERT D.,	New York.
BRISTOW, BENJAMIN H.,	New York.
BRUSH, CHARLES H.,	New York.
BULLARD, E. F.,	New York.
BURNETT, HENRY L.,	New York.
BUTLER, WM. ALLEN,	New York.
BUTLER, WM. ALLEN, JR.,	New York.
CLARK, JAMES OLIVER,	New York.
CLARK, THOMAS ALLEN,	New York.
COX, S. S.,	New York.
CROWELL, CHARLES E.,	New York.
DAVISON, CHARLES A.,	New York.
DILLON, JOHN F.,	New York.
DORSHEIMER, WILLIAM,	New York.
DUDLEY, JAMES M.,	Johnstown.
EATON, SHERBURNE B.,	New York.
EMOTT, JAMES,	New York.
EVARTS, WILLIAM M.,	New York.
FOX, AUSTEN G.,	New York.
HALE, MATTHEW,	Albany.
HUTCHINS, WALDO,	New York.
ISAACS, M. S.,	New York.
JEWETT, HUGH J.,	New York.
KERNAN, FRANCIS,	Utica.
LEEDS, CHARLES C.,	New York.
MACFARLAND, W. W.,	New York.
MATHEWS, ALBERT,	New York.
MOAK, N. C.,	Albany.
NASH, STEPHEN P.,	New York.
NELSON, HOMER A.,	Poughkeepsie.
NICOLL, DELANCEY,	New York.
OLMSTEAD, AARON B.,	Saratoga Springs.
PARKER, ALTON B.,	Kingston.
PARKER, AMASA J.,	Albany.
PEABODY, CHARLES A.,	New York.
PEABODY, CHARLES A., Jr.,	New York.
PHELPS, WM. WALTER,	New York.
PORTER, JOHN K.,	New York.
PRIME, RALPH E.,	Yonkers.
PRYOR, ROGER A.,	Brooklyn.

NEW YORK—Continued.

ROGERS, SHERMAN S.,	.	.	.	Buffalo.
RUSSELL, W. H. H.,	.	.	.	New York.
SCHOONMAKER, AUGUSTUS, JR.,	.	.	.	Kingston.
SCUDDER, HENRY J.,	.	.	.	New York.
SHACK, FERDINAND,	.	.	.	New York.
SHEPARD, ELLIOTT F.,	.	.	.	New York.
SMITH, HORACE E.,	.	.	.	Albany.
SPRAGUE, E. C.,	.	.	.	Buffalo.
SPEIR, GILBERT M., JR.,	.	.	.	New York.
STERNE, SIMON,	.	.	.	New York.
STICKNEY, ALBERT,	.	.	.	New York.
SULLIVAN, ALGERNON S.,	.	.	.	New York.
TAYLOR, JOHN D.,	.	.	.	New York.
TODD, A. J.,	.	.	.	New York.
TUCK, SOMERVILLE P.,	.	.	.	New York.
VANDERPOEL, A. J.,	.	.	.	New York.
WARD, JOHN E.,	.	.	.	New York.
WHEELER, EVERETT P.,	.	.	.	New York.
WILLIS, BENJAMIN A.,	.	.	.	New York.
WINSLOW, JOHN,	.	.	.	New York.

NORTH CAROLINA.

BOYD, JAMES E.,	.	.	.	Greensboro.
BRIDGERS, JOHN L., JR.,	.	.	.	Tarboro.
KEOGH, THOMAS B.,	.	.	.	Greensboro.
STAPLES, JOHN N.,	.	.	.	Greensboro.

OHIO.

BAKER, WILLIAM,	.	.	.	Toledo.
BALDWIN, CHARLES C.,	.	.	.	Cleveland.
BURKE, STEVENSON,	.	.	.	Cleveland.
CHERRINGTON, THOMAS,	.	.	.	Ironton.
COLSTON, EDWARD,	.	.	.	Cincinnati.
CRAIGHEAD, S.,	.	.	.	Dayton.
DAUGHERTY, M. A.,	.	.	.	Columbus.
DAVIDSON, WILLIAM A.,	.	.	.	Cincinnati.
FERGUSON, E. A.,	.	.	.	Cincinnati.
FORCE, MANNING F.,	.	.	.	Cincinnati.
GRANGER, M. M.,	.	.	.	Zanesville.
GREEN, EDWIN P.,	.	.	.	Akron.
GRISWOLD, SENECA O.,	.	.	.	Cleveland.

OHIO—Continued.

GROESBECK, WILLIAM S.,	Cincinnati.
GUNCKEL, LEWIS B.,	Dayton.
HALL, JOHN J.,	Akron.
HARRISON, RICHARD A.,	Columbus.
HAYNES, DANIEL A.,	Dayton.
HODLY, GEORGE,	Cincinnati.
HODGE, NOAH,	Akron.
HOUK, GEORGE W.,	Dayton.
JOHNSON, EDGAR M.,	Cincinnati.
JOHNSON, WILLIAM W.,	Ironton.
JORDAN, ISAAC M.,	Cincinnati.
KING, RUFUS,	Cincinnati.
KOHLER, JACOB A.,	Akron.
LOGAN, THOMAS A.,	Cincinnati.
MASON, JAMES,	Cleveland.
MATTHEWS, STANLEY,	Cincinnati.
McCLINTOCK, W. T.,	Chillicothe.
MORRIS, S. W.,	Ironton.
MUNGER, WARREN,	Dayton.
NEAL, HENRY S.,	Ironton.
OVIATT, EDWARD,	Akron.
PAGE, HENRY F.,	Circleville.
RANNEY, HENRY C.,	Cleveland.
RANNEY, RUFUS P.,	Cleveland.
SHAW, R. K.,	Marietta.
SHOEMAKER, MURRAY C.,	Cincinnati.
UPSON, WILLIAM H.,	Akron.
YOUNG, EDMOND S.,	Dayton.

OREGON.

DEADY, M. P.,	Portland.
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PENNSYLVANIA.

ARMSTRONG, WM. H.,	Williamsport.
ARNOLD, MICHAEL,	Philadelphia.
ATHERTON, THOMAS H.,	Wilkesbarre.
BAER, GEORGE F.,	Reading.
BALDWIN, HENRY, JR.,	Philadelphia.
BAUSMAN, J. W. B.,	Lancaster.
BIDDLE, GEORGE W.,	Philadelphia.
BISPHAM, GEORGE TUCKER,	Philadelphia.

PENNSYLVANIA—Continued.

BRECK, CHARLES DU PONT,	Scranton.
BREDIN, JAMES,	Butler.
BRUNDAGE, A. R.,	Wilkesbarre.
CRAWFORD, GEORGE L.,	Philadelphia.
DARLING, EDWARD P.,	Wilkesbarre.
DARLING, J. VAUGHAN,	Wilkesbarre.
ELLMAKER, NATHANIEL,	Lancaster.
FRANKLIN, THOMAS E.,	Lancaster.
GATES, Q. A.,	Wilkesbarre.
GILBERT, LYMAN D.,	Harrisburg.
GREEN, HENRY,	Easton.
GROSS, JOSEPH P.,	Philadelphia.
GUTHRIE, GEORGE W.,	Pittsburg.
HANDLEY, JOHN,	Scranton.
HAY, MALCOLM,	Pittsburg.
HEMPHILL, JOSEPH,	West Chester.
HEVERIN, JAMES H.,	Philadelphia.
HUEY, SAMUEL B.,	Philadelphia.
KULP, GEORGE B.,	Wilkesbarre.
LAMBERTON, C. L.,	Wilkesbarre.
LEAR, GEORGE,	Doylestown.
LISTER, CHARLES C.,	Philadelphia.
LITTLE, WILLIAM E.,	Tunkhannock.
LIVINGSTON, J. B.,	Lancaster.
LUCKENBACH, W. D.,	Allentown.
MACVEAGH, WAYNE,	Philadelphia.
MCCINTOCK, ANDREW T.,	Wilkesbarre.
MERCER, GEORGE G.,	Philadelphia.
METZGER, THOMAS B.,	Allentown.
MILLER, N. DU BOIS,	Philadelphia.
MITCHELL, JAMES T.,	Philadelphia.
MONAGHAN, ROBERT E.,	West Chester.
NORTH, E. D.,	Lancaster.
NORTH, HUGH M.,	Columbia.
OUTERBRIDGE, ALBERT A.,	Philadelphia.
PALMER, HENRY W.,	Wilkesbarre.
PATTERSON, C. STUART,	Philadelphia.
PENNYPACKER, CHARLES H.,	West Chester.
PENNYPACKER, SAMUEL W.,	Philadelphia.
PERKINS, SAMUEL C.,	Philadelphia.
PETTIT, SILAS W.,	Philadelphia.

PENNSYLVANIA—Continued.

PORTER, WILLIAM A.,	Philadelphia.
PRICE, J. SERGEANT,	Philadelphia.
PRICHARD, FRANK P.,	Philadelphia.
RAWLE, FRANCIS,	Philadelphia.
RAWLE, WM. HENRY,	Philadelphia.
REED, HENRY,	Philadelphia.
REYNOLDS, SAMUEL H.,	Lancaster.
ROBB, SAMUEL,	Philadelphia.
ROGERS, GEORGE W.,	Norristown.
SANDERS, DALLAS,	Philadelphia.
SEIBERT, W. N.,	New Bloomfield.
SHARP, ISAAC S.,	Philadelphia.
SHIRAS, GEORGE, JR.,	Pittsburg.
SHOEMAKER, L. D.,	Wilkesbarre.
SLAYMAKER, AMOS,	Lancaster.
SMITH, WALTER GEORGE,	Philadelphia.
STEWART, JOHN,	Chambersburg.
STEWART, W. F. BAY,	York.
STURGES, E. B.,	Scranton.
TOWNSEND, WASHINGTON,	West Chester.
VAUX, RICHARD,	Philadelphia.
WADDELL, WILLIAM B.,	West Chester.
WAGNER, SAMUEL,	Philadelphia.
WILLARD, EDWARD N.,	Scranton.
WILTBANK, WILLIAM W.,	Philadelphia.
WOLVERTON, SIMON P.,	Sunbury.
WOODWARD, STANLEY,	Wilkesbarre.

RHODE ISLAND.

BRADLEY, CHARLES S.,	Providence.
GORMAN, CHARLES E.,	Providence.
PAYNE, ABRAHAM,	Providence.
PECKHAM, FRANCIS B.,	Newport.
SHEFFIELD, WILLIAM P.,	Newport.
THURSTON, BENJAMIN F.,	Providence.

SOUTH CAROLINA.

BACOT, T. W.,	Charleston.
BARKER, THEODORE G.,	Charleston.
BENET, WILLIAM C.,	Abbeville.
BOYD, ROBERT W.,	Darlington.

SOUTH CAROLINA—Continued.

CAMPBELL, JAMES B.,	.	.	.	Charleston.
DARGAN, E. KEITH,	.	.	.	Darlington C. H.
McCRADY, EDWARD, JR.,	.	.	.	Charleston.
SIMONTON, C. H.,	.	.	.	Charleston.
SMYTHE, AUGUSTINE T.,	.	.	.	Charleston.
YOUNG, HENRY E.,	.	.	.	Charleston.

TENNESSEE.

ALLISON, ANDREW,	.	.	.	Nashville.
BATE, H. R.,	.	.	.	Covington.
BROWN, JOHN C.,	.	.	.	Pulaski.
CARROLL, WILLIAM H.,	.	.	.	Memphis.
COOPER, EDMUND,	.	.	.	Shelbyville.
COOPER, WILLIAM F.,	.	.	.	Nashville.
ELLETT, HENRY T.,	.	.	.	Memphis.
ESTES, BEDFORD M.,	.	.	.	Memphis.
FENTRESS, JAMES,	.	.	.	Bolivar.
FRAYSER, R. DUDLEY,	.	.	.	Memphis.
GAUT, JOHN M.,	.	.	.	Nashville.
McFARLAND, L. B.,	.	.	.	Memphis.
McNEAL, ALBERT T.,	.	.	.	Bolivar.
MOORMAN, H. C.,	.	.	.	Somerville.
MORGAN, ROBERT J.,	.	.	.	Memphis.
PIERCE, JAMES O.,	.	.	.	Memphis.
SNEED, JOHN L. T.,	.	.	.	Memphis.
STEELE, THOMAS,	.	.	.	Ripley.
WALKER, SAMUEL P.,	.	.	.	Memphis.
WOOD, R. H.,	.	.	.	Bolivar.

TEXAS.

BALLENGER, W. P.,	.	.	.	Galveston.
CRAWFORD, W. L.,	.	.	.	Dallas.
FULTON, MARSHALL,	.	.	.	Denton.
GRESHAM, WALTER,	.	.	.	Galveston.
STOCKDALE, F. S.,	.	.	.	Cuero.
STREET, ROBERT G.,	.	.	.	Galveston.
WÆLDER, JACOB,	.	.	.	San Antonio.
WAUL, T. N.,	.	.	.	Galveston.
WEST, C. S.,	.	.	.	Austin.
WILLIE, A. H.,	.	.	.	Galveston.

VERMONT.

HINCKLEY, LYMAN G.,	.	.	.	Chelsea.
JOHNSON, WILLIAM E.,	.	.	.	Woodstock.
LAWRENCE, L. L.,	.	.	.	Burlington.
MCCULLOUGH, JOHN G.,	.	.	.	N. Bennington.
PAUL, NORMAN,	.	.	.	Woodstock.
PHELPS, EDWARD J.,	.	.	.	Burlington.
POLAND, LUKE P.,	.	.	.	St. Johnsbury.
PROUT, JOHN,	.	.	.	Rutland.
ROBERTS, DANIEL,	.	.	.	Burlington.
SHAW, WILLIAM G.,	.	.	.	Burlington.
SMALLEY, B. B.,	.	.	.	Burlington.
TUPPER, A. P.,	.	.	.	Middleboro.
WALKER, W. H.,	.	.	.	Ludlow.

VIRGINIA.

HAMILTON, ALEXANDER,	.	.	.	Petersburg.
PAGE, LEGH R.,	.	.	.	Richmond.
ROBERTSON, WILLIAM J.,	.	.	.	Charlottesville.
TUCKER, J. RANDOLPH,	.	.	.	Lexington.

WEST VIRGINIA.

BOGGESE, CALEB,	.	.	.	Clarksburg.
CAMPBELL, JOHN A.,	.	.	.	New Cumberland.
COLE, W. L.,	.	.	.	Parkersburg.
DAVIS, JOHN L.,	.	.	.	Clarksburg.
HEREFORD, FRANK,	.	.	.	Union.
HUTCHINSON, JOHN A.,	.	.	.	Parkersburg.
KNIGHT, EDWARD B.,	.	.	.	Charleston.
SOMMERVILLE, J. B.,	.	.	.	Wellsburg.

WISCONSIN.

CARY, ALFRED L.,	.	.	.	Milwaukee.
CARY, JOHN W.,	.	.	.	Milwaukee.
CARY, MELBERT B.,	.	.	.	Milwaukee.
GREGORY, J. C.,	.	.	.	Madison.
HOOKE, DAVID G.,	.	.	.	Milwaukee.
HUDD, THOMAS R.,	.	.	.	Green Bay.
JENKINS, JAMES G.,	.	.	.	Milwaukee.
MARINER, EPHRAIM,	.	.	.	Milwaukee.
PINNEY, SILAS U.,	.	.	.	Madison.
VILAS, WILLIAM F.,	.	.	.	Madison.
WEGG, DAVID S.,	.	.	.	Milwaukee.
WINKLER, FREDERICK C.,	.	.	.	Milwaukee.

APPENDIX.



ADDRESS
OF
ALEXANDER R. LAWTON,
OF GEORGIA,
PRESIDENT OF THE ASSOCIATION.

GENTLEMEN OF THE AMERICAN BAR ASSOCIATION,—The obligation imposed by your Constitution upon the President, “to communicate the most noteworthy changes in statute law on points of general interest, made in the several states and by Congress during the preceding year,” is much more serious in its exactions, and far more difficult to discharge properly than was probably contemplated by the men who so skillfully made the draft of our fundamental law. No one can fully appreciate these difficulties until he has attempted to execute the task.

There is no small labor in gathering the materials for this work, scattered as they are over an area from the St. Lawrence to the Gulf, from the Atlantic to the Pacific; but the attempt to give form and shape to this material—to eliminate the substance from the shadow, to separate the wheat from the chaff—conscious all the while that, when the result is finally reached and given out in utterance, he who proclaims it can only hope to be greeted with, “Dry-asdust!”—is indeed appalling. The knowledge that I speak to a generous profession, and to an audience which gives the assurance of that intelligent consideration, to be expected only from those who look with interest to the per-

manent value of the information conveyed, rather than to pleasure at the moment, gives me courage.

With this plea for charity, and this claim upon your patience, I remark, that the means indicated by our Association for acquiring the necessary information does not seem to be adequate for the purpose; for though my requests have in most instances been responded to with kindness and alacrity, yet in not a few cases, owing to change of residence, absence from the country, and the like, I have failed to receive either the statutes themselves or an abstract of them, and in some instances the failure has attached even to the final efforts made to procure them from the proper departments of the states themselves. Perhaps our able and watchful Executive Committee can devise some addition to the resources of future Presidents in this regard.

The terse and comprehensive statement of the objects of this Association, "to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the nation, uphold the honor of the law, and encourage cordial intercourse among the members of the American Bar," would not at first sight lead us to expect such exclusive prominence to be given at our opening each year to the mere changes in the statute law of the land. But if we bear in mind how largely the members of our profession are responsible for the passage, as well as for the frame and quality of these laws, our attention will be seriously arrested, and our judgment influenced as to the right of the lawyer to declaim against bad legislation—vicious or inconsiderate—as altogether *the work of others*.

In the Congress of the United States, in the legislatures of nearly every State, and in the high executive offices influencing legislation, most of the prominent and controlling men are lawyers, and this not including that one of the three

great departments of government in which every place is filled by members of this profession—the Judicial.

What other profession, calling, or vocation has assigned to it exclusively one of the great divisions of government? What other profession, calling, or vocation so largely represented in the other two great divisions—legislative and executive? Though not charged with this duty *as an entire profession*, yet, as members of the legal fraternity, we cannot escape from the responsibilities which attach to these honors, whether they are sought for or thrust upon us. And ours is a generous profession, always ready to serve the individual or the public—for a proper consideration, whether expressed in the form of the traditional *honorarium*, or in the honors and perquisites of high office bestowed. And so close an observer as de Tocqueville has said that “a republic could not long exist, if the influence of lawyers in public business did not increase in proportion to the power of the people.”

Let us not be deceived by the thought that our profession *as a whole* are naturally or necessarily on the side of the right, and of free institutions. The brave and noble deeds which have been performed by the great lights of the law—defending the oppressed and defying the oppressor—are to be credited rather to the *individual* men who have done these great and good works, and thus reflected honor on the profession, without borrowing honor from it. Accepting, then, our measure of this responsibility for the character of these changes in the statute law, let us proceed to glance at them, and endeavor to ascertain whether, in these efforts at change, we are mindful of Shakspeare's warning, that in “Striving to better, oft we mar what's well”—whether it is indeed fortunate or not that statutes in derogation of the common law are to be strictly construed, so as to encourage any alteration of the existing law as little as possible, or, as the objectors to this rule would sneeringly state it, “That re-

formatory legislation must be prevented as far as practicable from working the reform intended."

It was Bulwer who said, "In all the departments of thought among which intellectual life is distributed, there must be, for safe and continuous progress, a principle that delays innovation."

THE UNITED STATES.

The legislation of Congress at its last session consisted of eighty-two public acts, twenty-nine public resolutions, eighty-one private acts, and two private resolutions; showing how much attention is given by that body to the private interests of individuals. The most important act was one to regulate and improve the Civil Service of the United States, which provides for the manner of filling places in the various departments of the government, and is regarded as a step in the direction of reform. The act is full of details as to the methods to be resorted to for ascertaining competency and merit, and while it makes us full of hope, it seems to be very imperfect in many of its details. Professedly it is intended to do away with that principle, which has been so long asserted after the success of any political party, "To the victors belong the spoils." This act has been so generally discussed in the public prints, and is so well known to most intelligent men, that I refrain from dwelling upon it.

An act to afford assistance and relief to Congress and the executive departments, in the investigation of claims and demands against the government, is important, as recognizing the fact that the judicial function does not properly belong either to Congress or the executive departments, but that the courts are the proper forum for the trial of disputed questions of fact and law, arising in cases in which the United States are concerned. It is hoped that the transfer

of the vast mass of private claims, which has accumulated before the committees of Congress and the bureaus of the executive departments, to the Court of Claims, will cause the government to feel the purifying influence of the change. But will the transfer be actually made, and the lobbyist and the confidence-man lose his occupation?

It seems to be an evidence of the increase of luxury in the country, that the act of March 3, 1883, authorizes the Secretary of the Treasury to "cause yachts used and employed exclusively as pleasure-vessels, or designed as models of naval architecture, to be licensed on terms which will authorize them to proceed from port to port of the United States, and to foreign ports, without entering or clearing at the custom-house." On the other hand, it seems to indicate an increase of vice of a certain sort, that an act of Congress is "directed against the importation into the United States from foreign countries of obscene books, pamphlets, papers, etc., or other articles of a similar nature, or any drug or medicine, or any article whatsoever, for the prevention of conception, or for causing unlawful abortion.

It may be interesting to the profession to know that Congress has appropriated eight thousand dollars to enable the librarian of Congress "to purchase a set of records and briefs in cases in the Supreme Court of the United States, belonging to the late Matthew N. Carpenter, which collection will be placed in the law branch of the Library of Congress."

CONSTITUTIONAL AMENDMENTS.

Arkansas has submitted for ratification an amendment, which is noticed elsewhere, relating to the state debt.

A joint resolution of the legislature of *Missouri* proposes the establishment, by constitutional amendment, of a new system of courts of appeal, upon which the people are to vote in November next.

The *Nevada* legislature has recommended the call of a constitutional convention for the purpose of making a general revision of her fundamental law, and has nevertheless proposed for ratification by the people four amendments, the first providing for biennial sessions of the legislature; the second, disfranchising all persons convicted of felony or treason in any state or territory, and all persons convicted of selling their vote at any election within the state; the third, changing the law regulating the method of amending the constitution and calling conventions for this purpose; and the fourth, setting aside large tracts of land for the exclusive benefit of the state educational fund.

New York has proposed an amendment prohibiting contract labor in the state prisons; and *South Carolina* has given power to her legislature to take away the right of suffrage from persons who have been convicted of burglary, larceny, perjury, forgery, or any other infamous crime, as well as treason, murder, and duelling, as now provided by law.

LAWS AND CODIFICATION SYSTEM OF LAW.

The common law of England, so far as it is not repugnant to the Constitution and laws of the state and the United States, has been adopted by the state of *Nevada*.

New York has codified all of her laws relating to the militia, and adopted a military code; while *North Carolina* has adopted a revised code, containing all the statute laws of that state.

Tennessee has, by joint resolution, granted authority to two attorneys of the state to make a revision, digest, and codification of her general laws, which, when completed, shall be known as the Code of Tennessee; and the act expressly provides that the compilation shall be done at the expense of the compilers. It may be inquired whether they did not have this right without a special statute!

STATE DEBTS.

Arkansas has submitted to the people for their ratification an amendment to her constitution prohibiting the payment of certain bonds of the state, known respectively as "funding bonds," or "Holford bonds," "railroad aid bonds," and "levee bonds," issued under certain acts of the legislature approved in 1868, 1869, and 1871. (Acts of 1883, p. 346.)

North Carolina has extended to January 1, 1885, the provisions of the act of 1879 for the compromise and settlement of her debt, which expired by limitation on January 1, 1882.

POLITICAL ENACTMENTS.

New York has established a Civil Service Commission, for the examination of applicants for state offices which are not elective nor merely those of day laborers, and to test the fitness of applicants for promotion. The commission is composed of three persons appointed by the governor.

The same state has endeavored to suppress political assessments by making it a misdemeanor for a public officer to solicit contributions for political purposes from other officers, or to change or threaten to change the rank or compensation of any other officer by reason of payment or non-payment of money for political purposes, or by reason of the way in which a vote shall be cast. The act provides that it shall not prevent any public officer from giving free gifts and contributions for political purposes to any person other than a public officer, outside of the building where official duties are discharged; but if they be given in consideration of retaining or securing public office, the offense is a misdemeanor.

New York also permits appointments by the governor, which require confirmation by the Senate, to be made during the session of the legislature next before the expiration of the term of the then incumbent.

BALLOTS AND ELECTIONS.

Primaries.

Colorado has passed an act prescribing the manner in which primary elections shall be conducted and the votes cast be counted; but the act shall only be enforced when the party, convention, or committee ordering the election shall prescribe that it be conducted under its provisions. *Nevada* also has passed an act to regulate primaries, while *Connecticut* has made bribery and fraud at caucuses criminal. *New Jersey* has prescribed a punishment for bribery at all primaries, conventions, and elections.

Colorado has enacted that, in all public elections, all ballots shall be printed in black ink on plain white news printing paper of a prescribed size, "without any device or mark whatsoever by which one ticket may be known or distinguished from another, except the words at the head of the ticket." And "When a ballot with a certain designated heading contains printed thereon, in place of another, a name not found on the regular ballot having such heading, such name shall be regarded by the judges [of election] as having been placed thereon for the purpose of fraud, and such ballot shall not be counted for the name so found."

In *New Jersey*, at all general, local, municipal, or special elections, a certain prescribed form of ballot-box shall be used, of which the top and bottom shall be wood, and the four sides shall be of plate glass at least five-sixteenths of an inch thick. The dimensions and manner of construction are minutely described; and it is further provided that it shall have three locks of different construction, so that none of them can be opened with the key belonging to another; and the box must be so constructed that, when locked, no ballot can by any means be placed in it.

TAXATION.

North Carolina has provided for the assessment of white persons for schools for white children, and of colored persons for schools for colored children.

In *New York*, all debts and obligations of every description due to residents of the state, however secured, and wherever the securities may be held, are made subject to taxation by the state.

The most noteworthy change in the laws of the states on this subject of taxation is the *Vermont* "Act to Provide a Revenue for the Payment of State Expenses." Under its provisions all such funds are to "be raised by direct taxes upon the corporate franchise or business of railroad, insurance, guaranty, express, telegraph, telephone, steamboat, car, and transportation companies, savings banks, savings institutions, and trust companies." A commissioner of state taxes is provided for, whose duty it shall be to see to the collection of the taxes imposed. The act provides for the amounts of the taxes, the returns, and payment and collection. It does not appear from the act that the corporations are relieved from any taxes for county and city purposes.

Vermont has also passed an act requiring owners of fowls aggregating more than \$20 in value, to pay a tax on their value in excess of \$20; and the act provides that dressed poultry shall in no case be exempt. The same state has enacted that the exemption from taxation which was enjoyed by the now defunct Vermont Central Railroad shall not be enjoyed by any trustee, manager, receiver, reorganized corporation, or lessee operating the road. Was not that the law before this statute?

West Virginia has created a commission to ascertain facts concerning, and consider the assessment and taxation of,

property within the state. Each commissioner is authorized to administer oaths and propound questions, and it is made a misdemeanor for any person to refuse to answer "any question." Is not this a "thumb-screw" process?

EDUCATION.

Alabama and *Vermont* have made physiology and hygiene a part of the prescribed curriculum of their public schools, and, in the latter state, special prominence must be given to the effects of stimulants and narcotics upon the human system. *Michigan* has also done the like.

Illinois, *Michigan*, *New Jersey*, and *Rhode Island* have passed laws upon the subject of compulsory education. *Illinois* requires all children between the ages of eight and fourteen to attend some public or private school for twelve weeks in each year, six of which must be consecutive weeks; while *Rhode Island* prescribes that children between the ages of seven and fifteen shall attend a *public* school for the same period, private schools being substituted only when approved by a school committee. In the latter state, "truant officers" are appointed to enforce the law.

California has added an Industrial Department to the Deaf, Dumb, and Blind Asylum of the state; and *South Carolina* gives to a certain number of meritorious boys in Charleston, to be selected by competitive examination, an opportunity for free collegiate education.

The subject of legal education seems to have engaged the attention of but one state. *California* has by statute given permission to S. C. Hastings to found "The Hastings College of the Law" as a part of her state University; and the only condition attached is that there shall always be a course of lectures upon the duties of municipal officers in the city and county of San Francisco.

LABOR AND LABORERS.

California, Missouri, Michigan, New York, and Wisconsin have each established by law a Bureau of Labor Statistics, whose duty it shall be to present annually to the governor or legislature statistical details relating to 'all the departments of labor, especially in relation to the commercial, industrial, social, and sanitary condition of working-men, and the productive industries of the state. Members of the California bureau "shall have free access to all places and works of labor," and it is made the duty of those in Missouri to inspect all mines, warehouses, machine-shops, factories, workshops, foundries, and other manufacturing establishments where persons are employed.

New Jersey has taken a backward step in relation to strikes, and declared it not to be unlawful for two or more persons to combine together or agree to "persuade, advise, or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any person, persons, or corporation."

New York has submitted to the people for their ratification a constitutional amendment prohibiting contract labor in the state prisons.

Ohio has given to laborers employed by any person or corporation at agriculture, mining, manufacturing, or other manual labor, a lien upon the real property of their employers for their wages.

Pennsylvania has passed an act for the adjustment of differences between employers and employés in the iron, steel, glass and textile fabrics, and the coal trades, known as the "Voluntary Trade Tribunal Act." It provides for submitting all and vexed disputes to a tribunal chosen equally by both parties (under a permit from the judge

presiding in that judicial district), whose decisions may be made final and enforced by the processes of law, under certain limitations carefully guarded.

RAILROAD LAWS.

Alabama makes it a misdemeanor for two or more railroads to make any pooling arrangements whatever for the purpose of preventing fair and free competition, the provisions of the act extending to arrangements made outside of the state, to be executed within it; and also prohibits their making discriminating rebates from their tariff of rates.

In *Arkansas*, any railroad may now "cross, join, intersect, or unite with" any other railroad within the state, which must, under prescribed penalties, co-operate and furnish all necessary facilities. Both companies are compelled to stop their trains at the point of union or intersection, and are prohibited from discriminating in any manner against freight or passengers of the other.

In *Connecticut*, all railroads must hereafter, in their public time-tables, conform to the standard time of the state, which is that of New York City. In the same state, any railroad owning a line, built or unbuilt, to an adjoining state, may consolidate with any connecting road, built or unbuilt, in the latter state.

Florida has followed the example of so many of her sister states, and now permits the husband, wife, or minor child, or, if there be none, the administrator of one killed through the negligence of another, to sue for the value of the life in all cases in which the deceased, had he lived, could have sued for the resulting damages.

Railroads doing business in *Illinois* must hereafter keep open in that state all necessary books for the transfer of its stock; and must also keep their depots open and well

lighted and heated for at least a half hour before and after the arrival and departure of trains.

Minnesota has declared the willful neglect or gross negligence of any officer or employé of any railroad, resulting in the death of any person, to be manslaughter in the third degree; where an injury is inflicted which does not result in death, the punishment shall be by fine and imprisonment.

In *North Carolina*, all equipments and rolling-stock of every description shall hereafter be subject to judgments against the company using and controlling them, unless the vendor's lien shall be recorded; and any such claimed by the vendor must have his name plainly marked on both sides.

Recent decisions of the Supreme Court of *Tennessee*, to the effect that damages in suits by the next of kin for death caused by the fault or omission of another, must be only such as the deceased could have recovered had he lived, have provoked an amendment of the statute by which the recovery shall hereafter embrace "not only damages for the mental and physical suffering of the deceased, but also the damages resulting to the next of kin."

If the damages referred to are *pecuniary*, the next of kin can scarcely suffer them by the death of a relative. They often have their condition much improved by "his taking off."

Vermont has passed three acts upon this subject, of which the first, entitled "An Act to Prevent Unjust Discriminations," does not differ materially from the previous legislation of other states for the same purpose. The second permits the companies to fix their own rates of toll for freight and passengers; but the Supreme Court may, upon the petition of three freeholders, and after notice to the company, reduce the toll in its discretion. The third grants

to the railroad commissioners power to fix the times when passenger trains of connecting roads shall connect with each other.

West Virginia makes provision for the manner in which railroads may extend their lines beyond their present termini; but the Baltimore and Ohio and Northwestern Virginia railroads are specially excepted in the act. What have these excluded roads done to deserve this treatment?

Another statute of the same state enacts that no injunction shall be granted by any court or judge to restrain the collection of taxes on any railroad, except upon the ground of the unconstitutionality of the tax. Should the legislature take a fancy to tax any railroad to the full extent of its value, and thus *destroy it at one blow*, this act seems to deprive the unfortunate corporation of any remedy.

The legislature of *Texas* gave long and earnest attention to this subject of the proper control of railroads; and it culminated in the passage of the act of April 10, 1883, for the appointment of a "state engineer," whose duties and powers are large, but well defined. He must personally visit each railroad in the state twice every year; listen to complaints and grievances, and endeavor to correct them. If he fails to correct them, and any law is violated, he must report to the governor and attorney general, so that suits may be brought. There are many valuable features in the act, and it is in striking contrast with the action of many of the states giving to commissioners the most arbitrary powers over railroads, to be exercised without even giving the roads a hearing.

CORPORATIONS.

In *Connecticut*, every charter granted shall be void unless the corporation be organized within two years, and a certificate be filed with the secretary of state.

Nevada has passed an act allowing certain domestic and certain foreign corporations to consolidate.

All *New York* corporations (except savings banks) doing business in that and other states and countries may invest their funds in the dividend-paying stocks or securities of other corporations doing business in New York, or such other states or countries. The general act of the same state for the incorporation of mining and manufacturing companies is amended by providing that there shall be not less than three nor more than thirteen trustees, of whom a majority shall be residents and citizens of the state.

INSURANCE.

The subject of insurance has received some attention from the different states.

Illinois has declared by statute that "associations and societies which are intended to benefit the widows, orphans, heirs, and devisees of deceased members thereof, and members who have received a permanent disability, and where no annual dues or premiums are required, and where the members shall receive no money, as profit or otherwise, except for permanent disability, shall not be deemed insurance companies." The same state has passed an act for the purpose of suppressing the practice known as "*graveyard insurance*."

New Jersey has declared that the transaction or attempt at transaction of fire insurance business by or on behalf of any person or corporation not authorized by the laws of the state is a misdemeanor.

New York has repealed her obnoxious act of 1881 (noted by your President of that year) providing that whenever, by the laws of other states, restrictions are imposed on the transaction of business by insurance companies of New

York, the courts of New York shall not entertain suits brought against such companies for losses occurring in such state.

Michigan has made material alterations of her insurance laws.

SUNDAY LAWS.

Nevada has made it a misdemeanor for any person to keep open on Sunday "any store, banking-house, broker-office, or other place of business for the purpose of transacting business therein," or to expose for sale "any provisions, dry-goods, clothing, hardware, fruits, vegetables, or other merchandize;" but the provisions of the act shall "not apply to persons who, on Sunday, keep open hotels, boarding-houses, barber-shops, baths, *saloons*, cigar-stores, restaurants, taverns, livery-stables, and drug-stores, for the legitimate business of each." The *exceptions* here are much greater than the rule!

The Sunday law of *New York* as it now exists may be thus briefly stated: All labor is prohibited, except works of necessity or charity, and they are defined as including "whatever is needful during the day for the good order, health, or comfort of the community." "All manner of public selling, or offering for sale of property on Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold, or served elsewhere by caterers; and prepared tobacco, in places other than where spirituous or malt liquors or wines are kept or offered for sale, and fruit, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner at any time of the day."

ADULTERATION OF FOOD AND PRESERVATION
OF HEALTH.

In *California*, hereafter all *oleomargarine* must be distinctly labeled with its name, and hotel keepers and dealers who use it must post in a conspicuous place a sign reading, "Oleomargarine sold here." In addition to this, all hotel and boarding-house keepers who furnish it to their guests must, on inquiry from them, cause them to be distinctly informed that the article before them "is not butter, the genuine production of the dairy, but is *Oleomargarine*." Very severe on Oleomargarine, and on hotel keepers, their clerks, etc.!

Illinois has made the adulteration of vinegar a misdemeanor; and *New Jersey* has passed an act to regulate the sale of petroleum and its products, and an act supplemental to an act to prevent the adulteration of food and drugs.

Pennsylvania has passed an "Act to Protect Dairy-men, and prevent Deception in the sale of Butter and Cheese," the text of which I have not seen, but which is probably aimed at Oleomargarine.

Missouri has created a State Board of Health, who are given the necessary authority to prevent epidemics, and to whom all births and deaths must be reported; and in *Wisconsin*. every town and village board or common council shall hereafter, within thirty days after each annual election, organize itself into a board of health, and appoint a health officer for the protection of the public health.

Texas has passed a most rigid and well conceived quarantine act, giving very large powers to the governor and "chief health officer" to prevent the entrance or spread of epidemics. It is doubtful if any state has taken hold of this question with greater earnestness and vigor.

HUMANE LAWS, AND LAWS FOR THE PRESERVATION OF
HUMAN LIFE.

An *Alabama* statute requires that persons convicted of misdemeanors and felonies on the one hand, and white and colored convicts on the other, from being made to sleep in the same room, or chained together; and also prohibits the *subletting* of state convicts.

Alabama has passed an act for the prevention of cruelty to animals.

Minnesota and *New Jersey* have established a State Board of Charities and Corrections.

Minnesota, *New Jersey*, *South Carolina*, and *Missouri* have each passed acts to regulate the licensing of physicians, and prohibiting the practice of medicine by any one not licensed according to law. The *Carolina* statute requires graduates of medical colleges outside of the state to produce their diplomas to some medical college within the state, and be licensed only on the indorsement of the latter. The *Missouri* statute requires all physicians to be licensed by the newly created State Board of Health, and all itinerant vendors of drugs, nostrums, etc. (quacks), to pay a license fee of \$100 a month, under penalty of fine and imprisonment.

In *Missouri* it is unlawful to transport on any railroad "nitro-glycerine in a liquid form, except in car-load lots and in a congealed state, and *accompanied by the shipper*." Most effective protection!

The practice of carrying deadly weapons, and the use of them by minors and persons intoxicated, has received attention from the legislatures of six states.

Missouri has increased the penalty for violation of her law against carrying concealed weapons; carrying deadly weapons to certain peaceable assemblages; exhibiting them in a rude, angry, and threatening manner; carrying them by

an intoxicated person, or selling or giving one to a minor. *New York* prohibits the carrying of pistols or other fire-arms in any city by any person under eighteen years of age. The carrying of concealed razors is prohibited* in *North Carolina*. *Rhode Island* makes it a misdemeanor to sell to any child under the age of fifteen any gun, pistol, or explosive cartridge. A *Vermont* statute, entitled "An Act to Preserve Human Life," provides that the selling, offering to sell, or giving away of any toy pistol is a misdemeanor, and any party violating the statute shall become liable for all damages that may accrue. In *Wisconsin*, the use and sale of pistols and revolvers by and to minors, and the carrying of the same by persons in a state of intoxication, are punishable by fine and imprisonment.

New Jersey has passed three acts relating to the proper care and treatment of children. The first permits municipalities to levy an annual tax of a sum not exceeding \$1,000 for the relief of indigent children; the second is an act for the prevention of cruelty to children, the particulars of which are unimportant; and the third relates to their employment in factories and workshops. Under its provisions the employment of boys under twelve and girls under fourteen years is absolutely prohibited; no child between twelve and fifteen shall be employed unless he or she shall have attended for twelve weeks during the preceding year, six of which shall have been consecutive weeks, and for five days or nights in each week, some public day or night school; and no child under fourteen years of age shall be employed for more than an average of ten hours a day, or sixty hours in one week. Any employer violating the provisions of the act is guilty of a misdemeanor.

* This was doubtless caused by the frequency with which our newly made citizens of African descent have made this peaceful instrument a weapon of terrible power.

New York has turned her attention to "baby-farming," and made it a misdemeanor for any person not licensed to receive or board more than two infants under three years of age at the same time and place. The statute does not refer to infants accompanied by their parents or guardians, nor to incorporations for foundlings.

In *Nevada*, insane convicts must be transferred to the lunatic asylum of the state.

Ohio requires hotels to provide fire-escapes which can be easily reached in case of fire, and, in all rooms above the second story, a good rope or other life-line for the guests must be provided; and *Pennsylvania* has passed an act on the same subject, of which I have seen only the title.

Pennsylvania has also passed an "act relative to the supervision or control of hospitals, or houses in which the insane are placed for treatment or detention," this supervision to be exercised by the Board of Public Charities, to which three members are added for the special purpose, one a physician, one a lawyer, each of not less than ten years' standing. These are to be appointed by the governor and confirmed by the Senate. Five persons from the board, among whom shall be the lawyer and the physician referred to, shall constitute a committee on lunacy. They shall select one of their number as secretary, who shall receive a salary of \$3,000 per annum, and his incidental expenses. This committee shall examine and report annually to the board on the condition of the insane and of all houses for their care, public and private.

All persons in charge of such houses are required to allow the committee free access at all times to the insane, and to furnish full information regarding them and their treatment. Reports of said committee are to be published annually with that of the board. The board shall have power,

with the consent of the chief justice and attorney general, to regulate the licensing or not licensing of all houses for the reception and care of the insane, to make regulations for their proper treatment, for their commitment and discharge, for the visitation of, all such houses, and for the withdrawal of licenses.

The managers of all such houses are required to furnish reports to the committee as to the number of persons detained, their accommodation, food, clothing, the restraints imposed on them, and their means of communication with the outer world. The Board of Public Charities shall appoint in every county where there are houses for the care of the insane, local boards of visitors, who shall have free access to all means of information regarding the conduct of such houses. A record book shall be kept of all cases and facts of importance regarding the patients, which shall be open to inspection.

The act enters into many details to secure to the patients means of communication with their friends, attorneys, or physicians outside, and to prevent any unjust committal of any person, or to secure to any who are improperly detained the means of discharge.

Vermont also has turned her attention to the subject of insanity, and not only provided for the inspection of asylums and the treatment of patients, but has enacted that no person shall be detained as insane, except upon the certificate of two physicians of unquestionable skill and integrity, residing in the probate district in which such insane person resides, stating their reasons for adjudging such person insane. A next friend or relative of such person may appeal from their decision, and he or she shall not be detained in the asylum pending the appeal. A violation of this statute by trustees, officers, or employes of asylums is made a felony. The same state has declared pigeon-

shooting to be a misdemeanor, and has secured to convicts freedom of conscience and of religious worship.

In *Wisconsin*, the setting of spring guns for the purpose of killing game is punishable by imprisonment in the state's prison for not less than six months, nor more than three years; and if thereby the death of any person is caused, the offense becomes manslaughter in the second degree.

CRIMINAL LAW.

In *Alabama*, all defendants shall be permitted to make, not under oath, statements in their own behalf; and a failure to do so shall not militate against the prisoner, *nor be made the subject of comment against him*.

In *Arkansas*, the sale, circulation, or display of obscene literature shall be a misdemeanor. In the same state, dealing in futures is declared to be "*gambling*," and is punishable by fine and imprisonment.

Tennessee has declared the buying and selling of futures to be "*gaming*," and has made it a felony for any person to keep a room for the purpose of permitting, aiding, or assisting the playing of keno, faro, and other "*gambling*" games.

Colorado has established a system of criminal courts for the trial of misdemeanors, and all felonies except capital crimes, in which there shall be no grand jury, but the prosecution shall be upon information verified by affidavit of the district attorney. This state and West Virginia have both made prize-fighting a felony. The Colorado statute includes the aiding or abetting a prize-fight, while that of West Virginia makes the coming into the state for the purpose of aiding or abetting one, a misdemeanor.

Connecticut has enacted that the bodies of executed criminals shall hereafter be buried by the sheriff, and not given over to the family.

Connecticut has made bribery and fraud at caucuses criminal. She has also established a system of county coroners, one for each county, who shall appoint a medical examiner in each town to report untimely deaths to him; and has also delegated the pardoning power to a board of pardons, to be composed of the governor, a judge of the Supreme Court, a physician, and three other citizens.

Illinois has taken up the question of how to deal with *habitual* or professional criminals; and passed the following act, which, on June 21, was in the hands of the governor awaiting his signature:

SEC. 1. *Be it enacted, etc.*, That whenever any person having been convicted of either of the crimes of burglary, grand larceny, horse-stealing, robbery, forgery, or counterfeiting, shall thereafter be convicted of any one of such crimes committed after such first conviction, the punishment shall be imprisonment in the penitentiary for the full term provided by law for such crime at the time of such last conviction therefor; and whenever any such person, having been so convicted the second time as above provided, shall be again convicted of any of said crimes committed after said second conviction, the punishment shall be imprisonment in the penitentiary for a period of not less than fifteen years; *Provided*, That such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment.

SEC. 2. On any trial for any of said offenses, a duly authenticated copy of the record of a former conviction and judgment of any court of record for either of said crimes against the party indicted shall be *prima facie* evidence of such former conviction, and may be used in evidence against such party.

Florida has made the false and malicious imputing of unchastity to any woman a misdemeanor.

In *Nevada*, the alteration of any draft of a bill presented to the legislature, or the enrolled copy of any bill which has passed, or the bribing or offering to bribe any legislator shall hereafter be a felony.

North Carolina has made it a misdemeanor for a landlord to seize the crop of a tenant when no rent is due.

Tennessee has made it a felony for any bank officer or any employé of a bank to receive deposits when he has reason to believe that the bank is insolvent, and the money is lost by the failure of the bank.

Wisconsin has passed several noteworthy criminal statutes: In criminal trials, if the jury shall find that there was reasonable doubt of the sanity of the accused at the time of the commission of the offense, they shall find him not guilty for that reason. When change of venue is applied for on the ground of prejudice in the mind of the judge, the court may make an order requesting the judge of an adjoining circuit to preside in his stead, in lieu of changing the venue. The keeping, management, or maintenance of policy-shops is made a misdemeanor. Any male person of the age of sixteen or upwards, being a vagrant, who shall be found within any town, city, or village, having at the time no visible means of support, and not being an actual inhabitant of such town, or who shall be found drunk and disorderly, shall be deemed a tramp, and on conviction, shall be punished by imprisonment in the county jail not less than fifteen days, and kept on bread and water only, or by imprisonment in the state's prison not exceeding one year.

Minnesota has re-established the death penalty in all convictions of murder, unless the court certifies to extenuating circumstances, in which case the punishment shall be imprisonment for life. The same state has made the willful and careless destruction of baggage a misdemeanor.

The state of *Maine* has also re-established the death penalty.

In *Missouri*, whenever a jury shall acquit any prisoner on the ground of insanity, they shall not only so state in

their verdict, but shall further find whether or not he has entirely recovered. If they find that he has recovered, he shall be discharged; otherwise "the prisoner shall be dealt with as provided in the two following sections" of the Revised Statutes.

PRACTICE AND PROCEDURE.

Alabama and *Colorado* have enacted that witnesses shall not be incompetent by reason of conviction of crime, but the fact of the conviction may go to the jury on the question of credibility. The *Colorado* statute includes all crimes, while that of *Alabama* excepts from its provisions perjury and subornation of perjury.

Colorado has fixed the number of juries in all civil cases at six, unless the parties shall agree upon a less number, or the court, in its discretion, allows a greater number, not exceeding twelve; while *North Carolina* has reduced the number composing "dower juries" to three.

Colorado has enacted that in criminal cases the charge of the court must always be in writing, and, if so requested, delivered before the argument of counsel.

In *Florida*, a party pleading over or amending after demurrer sustained does not thereby lose his right of exception, and may assign the decision sustaining of the demurrer as error.

Missouri, *Ohio*, and *Tennessee* have each organized by statute a Supreme Court Commission, intended to relieve their supreme courts from the great pressure which seems to be upon them. The *Missouri* statute is a lengthy one, and authorizes the Supreme Court, by order of record, with the concurrence of four judges, to appoint three commissioners, who shall have the same qualifications and take the same oath as the judges themselves, and whose appointment shall last for two years, within which time, however,

their services may be dispensed with by the court or by the abolition by law of the commission. The court may submit to them such pending causes as parties may agree upon, and all causes submitted on brief and without argument; and upon the rendition of judgment by the court upon report of the commission, "the right to a rehearing is saved to the parties" by the statute. The commission shall make to the court a report stating which of them concurred and which dissented, and dissenting members may also file reports. Says the act: "Every report shall contain a concise but comprehensive statement of facts in the case, a brief statement of the points, and citation of the authorities of counsel, the opinion of the commissioner or commissioners submitting the report, and a citation of the authorities relied on in support of the opinion." The court may approve, modify, or reject the report; and when approved, it is published as the opinion of the court, prefaced with a brief statement showing which commissioner prepared it, who concurred or dissented, and whether it was modified or not, and with the concurrence of which judges. Whenever the court shall reject the report, the opinion shall be prepared and like proceedings had as in other cases submitted to the court. The *Ohio* statute is brief, and authorizes the governor, with the confirmation of the Senate, to appoint a commission of five members, who shall hold office for two years, "to dispose of such parts of the business on the dockets of the Supreme Court as shall, by arrangement of said court and said commission, be transferred to said commission; and said commission shall have like jurisdiction and power in respect to such business as are or may be vested in the Supreme Court." The decisions of the commission shall be "certified, entered, and enforced as the judgments of the Supreme Court." They seem to be a second Supreme Court with concurrent jurisdiction. *Texas*

has also extended the provisions of a similar act, which seems to find favor with the bar.

The *Tennessee* statute establishes a Supreme Court Commission of Referees. The judges of the Supreme Court are authorized to appoint the members, and to refer to them such causes (except revenue causes) as they may select, "for investigation, and report upon the facts and law." The reports are to be made to the court for such action thereon as may seem to be proper, and are subject to exception, to be filed within a time limited; and, upon exceptions filed, the cause stands for argument before the court.

Missouri has relieved her Supreme Court from the necessity of preparing or filing written opinions "in any cause except such as shall be remanded for rehearing, or shall in the judgment of the court involve a principle or question not settled in an opinion of the court previously delivered, and reduced to writing and filed;" and has also enacted that when in the judgment of the court it becomes important for them to inspect the original of any exhibit, pleading, motion, bill of exceptions, or other paper filed in the cause in the trial court, it may require the original to be sent up from the court below.

The same state has enacted that the fact of incorporation or copartnership of any party or parties, when alleged in any pleadings, need not be proved unless denied under oath.

In *New York*, instruments which are not required by law to have a subscribing witness, but which have been witnessed nevertheless, may be proved without his evidence, as if there were no such witness; and in the same state, upon the hearing of an application to vacate upon notice an injunction order, the court or judge must, where the alleged wrong or injury is not irreparable, and is capable of being adequately compensated for in money, vacate the

injunction order, upon the defendants executing an undertaking in such form and amount and with such sureties as the court or judge shall direct, conditioned to indemnify the plaintiff against any loss sustained by reason of vacating such injunction order.

Ohio has by statute permitted her district courts, upon motion of one or both sides, when an important or difficult question of law arises, to reserve the cause, after finding all the facts, for the decision of the Supreme Court, provided the court is unanimous in the opinion that the cause should be reserved.

South Carolina has passed an act regulating the number of peremptory challenges to jurors to which each party shall be entitled in civil and criminal cases. In the former, each party is entitled to two such challenges alternately, and the right shall extend to jurors drawn to fill the place of those challenged. In murder, manslaughter, burglary, arson, rape, or grand larceny cases, the defendant shall have twenty peremptory challenges, and the state two; and in all other criminal cases, the defendant five, and the state two.

Michigan has passed a novel, but *very* important act to admit to probate the wills of persons still living, so as to test their testamentary capacity, while they are in life, to answer charges against them. The people are growing weary and angry with the manner in which the reputation and the last wishes of deceased persons are treated, and thus seek a remedy.

ACKNOWLEDGMENTS.

Missouri has adopted the statute on the subject of acknowledgments of deeds, etc., which was recommended at the last meeting of this Association.

In *New York*, conveyances of lands in that state, which are executed in Great Britain or Ireland, or any of the

British possessions, may be acknowledged before the mayor, provost, or chief magistrate of any city or town, or before any United States consul; and *North Carolina* has enacted that wills may be authenticated in foreign countries by any ambassador, minister, consul, or commercial agent of the United States.

HUSBAND AND WIFE—MARRIAGE AND DIVORCE.

Alabama has provided for the disposition of the dower interest of an insane married woman, by the ascertainment by the probate court of the value of the interest, and the appointment of a guardian to dispose of it and administer the proceeds.

Florida has passed a similar statute, which also provides that the circuit judge (who in that state appoints the guardian) may exact from the husband security for the wife's maintenance.

The rules of law as to the competency of husband and wife as witnesses for or against each other have been changed in some of the states.

In *Arkansas* they may testify in behalf of each other as to business transacted by one for the other in the capacity of agent. In *Colorado* they may be examined on either side with the consent of the one who is a party to the suit; and in *Vermont* the libellant and libellee are both competent witnesses in divorce cases.

Georgia has enacted that upon the death of the husband intestate, without lineal descendants, the wife (who is his sole heir) may, upon the payment of his debts, if any, "take possession of his estate without administration, sue for and recover the same."

In *Minnesota*, the statute recommended for adoption at the last meeting of this Association, which limits the jurisdiction of the courts in divorce cases, has become a law.

Missouri has a statute permitting married women to sue as *femme sole* for personal property belonging to her as her separate estate.

The statute of limitations has been so changed in *Ohio* as not to except married women from its operation, when the action is concerning their separate property, or growing out of or concerning business transacted in their own name.

An act of the legislature of Pennsylvania, "authorizing married women and their husbands living separate and apart under a deed of separation or mutual agreement, to sell and convey their separate real estate free and clear of rights of dower and curtesy and other interests," was vetoed by the governor, who made a noble protest against the present tendency towards the impairment of the sacredness, and weakening the strength, of the marriage tie.

Colorado has defined the degrees of relationship necessary to constitute incestuous marriage, "and all marriages between negroes or mulattoes of either sex and white persons are also declared to be absolutely void." The act provides that nothing therein contained shall be so construed as to prevent persons living in that part of the state acquired from Mexico from marrying "according to the customs of that country."

In *Vermont*, actions brought to annul marriages on the ground of coercion in entering into them may be prosecuted after the death of the suitor by any "parent or relation interested."

Wisconsin has relieved husbands from liability for the personal torts of their wives.

LIQUOR TRAFFIC.

In *Arkansas*, absolute prohibition may be enforced within three miles of any church, school, or university, on petition of a majority of the adult inhabitants, and the sale of liquors

within the same distance of the State Industrial School is prohibited by statute. It is declared to be a misdemeanor for any person not having a license to effect a clandestine sale of liquor by the device known as the "blind tiger," or any other device whatsoever.

The Supreme Court of *Florida* has sustained as constitutional a recent act prohibiting the granting of licenses except upon petition of a majority of the qualified voters of the election district in which the liquors are to be sold. The Supreme Court of *Iowa*, on the other hand, has declared that the amendment to the constitution of that state, adopted by vote of the people in June, 1882, which absolutely prohibited the manufacture and sale of liquors, wine, and beer, is unconstitutional, null, and void, on the ground that the proper steps were not taken for its adoption.

North Carolina has repealed her prohibitory law noted by your President two years ago.

Vermont has passed a sweeping and searching act on this subject, which I give at length:

No. 41.—An Act to Amend Section 3,800 of the Revised Laws.

It is hereby enacted, etc.,

SEC. 1. That section 3,800 of chapter 169. of the revised laws be so amended as to read as follows:

No person shall, except as otherwise specially provided, manufacture, sell, furnish, or give away, by himself, clerk, servant, or agent, spirituous or intoxicating liquors, or mixed liquor of which a part is spirituous or intoxicating, or malt liquors, or lager beer; and the phrase "intoxicating liquors," where it occurs in this chapter, shall be held to include such liquors and beer.

The word "furnish," where it occurs in this chapter, shall apply to cases where a person knowingly brings into or transports within the state for another person, intoxicating liquor intended to be sold or disposed of contrary to law, or to be divided among or distributed to others.

The words "give away," where they occur in this chapter, shall not apply to the giving away of intoxicating liquor by a person in his own private dwelling unless given (to a minor other than a member of his own private family or) to an habitual drunkard, or unless such private dwelling becomes a place of public resort. But no person shall furnish or give away intoxicating liquor at an assemblage of persons gathered to erect a building or a frame of a building, or to remove a building, or at a public gathering for amusement.

Nothing in this chapter shall prevent the manufacture, sale, and use of wine for the commemoration of the Lord's Supper, nor the manufacture, sale, and use of cider, or, for medical purposes only, of wine made in the state from grapes or other fruits the growth of the state, and which is without the admixture of alcohol or spirituous liquor, nor the manufacture by any one for his own use of fermented liquor; but no person shall sell or furnish cider or fermented liquor at or in a victualling house, tavern, grocery, shop, cellar, or other place of public resort, or at any place, to an habitual drunkard.

Approved November 2, 1882.

Statutes upon this subject enacted by *Illinois*, *Missouri*, and *Ohio* have excited much public comment. The *Illinois* statute, known as the "Harper bill," is a "high-license" law, and prohibits corporate authorities from granting any license for a less sum than five hundred dollars per annum, except licenses for the sale of malt liquors alone, in which case one hundred and fifty dollars shall be the minimum.

The *Missouri* "Dramshop Law," as it is termed in the statute book, is amended in several particulars. No license shall be granted in cities and towns having a population of more than 2,500, except upon petition of a majority of the assessed tax-paying citizens in the block or square where the dramshop is to be located; and in the towns having a population of less than 2,500 the same petition is required, as well as that of a majority of the assessed tax-payers of the

whole town. The bond required of the licensee is increased from one to two thousand dollars, and must be conditioned for the payment of all fines, penalties, and forfeitures that may be adjudged against him under the provisions of the act. In addition to the former state tax on the license of a sum not less than \$25, nor more than \$200, there is now levied a county tax of a sum not less than \$250, nor more than \$400. Any licensee who is convicted of selling liquor on the sabbath shall not only be fined, but shall also forfeit his license, and be barred for two years from obtaining another. No dramshop keeper shall sell to any "habitual drunkard," after being notified by the wife, father, mother, brother, sister, or guardian of such habitual drunkard, not to sell or furnish liquor to him, and any such notice shall be deemed to be a continuing notice; if the licensee disregard the notice, the person who gave it may recover of him (by action at law), for each offense, a sum not less than fifty, nor more than five hundred dollars.

The constitutionality of the "Scott Liquor Law" of *Ohio* has been tested before her Supreme Court, and established by its decision. It assesses upon each place where spirituous, malt, and vinous liquors are retailed, the sum of \$200 a year; where only malt or vinous liquors are retailed, \$100 a year; and this assessment is made a lien upon the premises. The owner of the premises is scarcely protected by the provision making it a misdemeanor to retail liquors without his consent. Twenty per cent. of the assessment is added as a penalty for non-payment when due. The sale of intoxicating liquors on Sunday, except by a licensed druggist, on the *bona fide* prescription of a reputable physician, is made a misdemeanor; and all places where liquor is sold must be closed on the Sabbath. The right is reserved to municipal corporations to regulate and control the sale of beer and native wines on the Lord's Day; and to "regulate, restrain,

and prohibit ale, beer, and porter houses, and places of habitual resort for tippling and intemperance." Selling liquor at any time to minors or intoxicated persons is made a misdemeanor.

This subject now claims such a large share of public attention, that much time and space are given to it in this summary. There is a crying evil abroad which calls for a remedy, and it is to be hoped that the friends of temperance will not be discouraged by the vast difficulties, both in principle and practice, which they encounter. Yet there is much ground for fear that the *intemperate* pursuit of their cause by its friends, may trench so far upon individual rights, as to produce reaction and ultimate failure.

PRESERVATION AND ADORNMENT OF PARKS AND HIGHWAYS.

Missouri and *Nevada* have passed joint resolutions instructing their senators and requesting their representatives to use all honorable means to prevent the leasing of the Yellowstone National Park, and to hasten the enactment of a law for its government, protecting its natural curiosities, timbers, lakes, and rivers, and prohibiting the destruction of its animals, birds, and fishes; and *New York* has passed an act authorizing the selection, location, and appropriation of certain lands in the village of Niagara Falls as a state reservation for the purpose of preserving the scenery of the Falls of Niagara.

New York holds out encouragement for the planting of shade trees on highways, by abating the highway tax of any person who does set them out, to the amount of one dollar for every four trees, the abatement not to exceed one-fourth of the tax.

Rhode Island has endeavored to preserve "Easton's Beach, in Middletown and Newport," by making it a misdemeanor for any one to remove sand or gravel from it.

All this is in the direction of a more cultivated state and a higher civilization.

MISCELLANEOUS.

In addition to the subjects of legislation which have been noticed, several of the states have made noteworthy changes in their statute law which can only be classed as miscellaneous.

Alabama has created a Department of Agriculture, by a statute which also provides for the inspection of fertilizers.

Vermont has enacted a very stringent statute requiring all commercial fertilizers offered for sale within her boundaries to be branded with the weight of the sacks, constituent parts, etc., and making a violation of the law a misdemeanor.

In *Arkansas*, a defendant cast in an ejectment suit, who has made improvements on the property in litigation, in the *bona fide* belief that he was the legal owner, shall be compensated by the successful plaintiff for the value of the improvements before he can be ejected.

Arkansas, *Colorado*, and *Pennsylvania* have passed statutes requiring that assignees of insolvent debtors for the benefit of creditors shall enter into bond with surety for the faithful discharge of their duties, and file, in court, reports of their actings and doings.

Illinois has enacted that, in voluntary assignments, laborers' and servants' wages, earned within the preceding three months, shall be paid as preferred claims; while in *Wisconsin*, assignments made for the benefit of creditors, giving preference to one creditor over another, except for the wages of laborers, servants, and employés, earned within six months prior thereto, shall be void.

Bearing upon a kindred subject is the statute of *Ohio*, providing that claims not exceeding \$150 for manual labor performed for a deceased person within twelve months of

his death, shall be considered as preferred debt against his estate.

In *Colorado*, the bodies of such persons dying in any almshouse, prison, hospital, house of correction, or jail, "as may be required to be buried at the public expense," shall be surrendered "to any licensed physician in the state, to be by him used for the advancement of anatomical science, preference being given to the faculty of legally organized medical colleges or schools of anatomy, for their use in the instruction of medical students," but no such body shall be so surrendered if the deceased, during his illness, requested to be buried, or if his relatives or friends claim his body for burial within twenty-four hours, or if he was a stranger or traveller who died suddenly before making himself known. The remains, after dissection, must be decently buried.

Missouri, by joint resolution of her legislature, has declared the former bankrupt law of the United States to have been productive of much harm, and instructed her senators, and requested her representatives in Congress to oppose the enactment of a new one.

Nevada and *Ohio* have abolished the distinction between instruments under seal and those not under seal, the former enacting that "the word 'Seal,' and the initial letters 'L. S.,' and other words, letters, or characters of like import, opposite the name of the signer of any instrument in writing, are hereby declared unnecessary to give such instrument legal effect, and any omission to use them by the signer of any instrument shall not be construed to impair the validity of such instrument;" and the latter that "private seals are abolished, and the affixing of what has been known as a private seal to any instrument whatever shall not give to such instrument any additional force or effect, or in any way change the construction thereof." Bonds and deeds and

other instruments conveying real estate shall be *signed* in the presence of two witnesses.

Nevada has passed a special act to admit to probate a paper purporting to be the will of one George P. Bláir as though it had been sealed with the seal of the testator. Interesting to inquire what rights would vest or could be divested under this act.

All goods manufactured in the *New Jersey* state prison must hereafter be "stamped in a legible and conspicuous manner with the words 'Manufactured in the New Jersey state prison.'"

A joint resolution of the *New Jersey* legislature requests Congress to abolish compulsory pilotage upon vessels engaged in the coasting trade; and another authorizes the governor to prepare and have presented to each officer and man of the New Jersey Battalion a medal to commemorate their good conduct at the Yorktown Centennial.

New York has passed an act providing that executors authorized by will to sell real estate may, unless the will otherwise direct, sell either at public or private sale, and on such terms as may seem to them most advantageous to the parties interested; and also a second act providing that, where two or more executors, as such or as trustees, have power given them to sell, mortgage, or lease, and any of them shall fail to qualify, the other or others shall enjoy the power fully.

New York has enacted that homestead property shall not be exempt from sales for taxes; *Vermont* has made the tool-chest of a mechanic exempt from levy and sale; and *Wisconsin* has declared that the earnings of all married persons, or persons having a family to support, shall be exempt for three months to the extent of sixty dollars a month.

North Carolina now requires that conditional sales of personal property shall be reduced to writing, and recorded.

Pennsylvania has passed "An act prohibiting the levying of license tax upon persons taking orders for goods by sample for individuals or companies who pay the tax at their chief place of business," of which I have seen only the title; and has also enacted that when any wire used for electric purposes is attached to, or shall extend over any building or land, no prescriptive right to maintain it there shall arise by lapse of time.

An act to establish and determine the boundary line between *Rhode Island* and *Massachusetts* has been passed by the former state, to take effect only when a similar act shall have been passed by the latter.

Wisconsin has enacted that no contract for the purchase, sale, transfer, or delivery of personal property, to be delivered and paid for at a future day, shall be void when either the buyer or seller shall, in good faith, *intend* to perform the contract.

All the information I have been able to obtain from the state of *Maine* is that the legislature, after sitting for a short while, adjourned over until late in August, for the purpose of embodying the acts of the present session in the new revision which has been provided for. The restoration of the death penalty is the only noteworthy act to which my attention has been called. The legislature is probably now in session, as is also the legislature of Georgia. The legislature of *Pennsylvania* is also now in session, and its laws not published.

CONCLUSION.

A closer examination into the year's legislation than is accomplished by this hurried glance, while it makes an exhibit of much that tends to ameliorate the condition of man and improve his belongings, yet leaves us painfully conscious of the merely tentative and experimental character of nearly all these efforts. The evils which press at

the moment are attempted to be legislated out of existence at a single blow. Real or fancied wrongs are to be righted by partial and short-sighted enactments. Disappointed suitors procure the passage of laws to give them a "better chance next time." A very small number of these statutes either assert or adhere to any great principle of action, or give evidence of high moral standard, or of that practical sagacity familiarly known as common sense, which will enable them to stand the scrutiny and test of time. Undue haste, inconsiderate action, controlling prejudice, and temporary passion, are written all over them.

How pleasant and refreshing to us, gentlemen of the Association, to turn from the consideration of this most imperfect statutory mechanism, to the law as we find it written in the decisions and opinions of the great judges of England and America—to those expositions, based upon the immutable principles of right and justice, which settle principles on such a firm foundation as to furnish guides for all future action; opinions which embody enlarged views as to the relations which individuals sustain to each other and to the State, as to the true office and duty of government, and the great moral forces which should control enlightened communities. When we see how satisfactory, how all-pervading, how permanent are the results thus accomplished by our profession, as a whole, it is indeed cause for grateful and intense pride in its achievements and traditions.

Much has been said, and sometimes flippantly, of the encroachments by "judge-made law." Even though such accusations are not entirely without foundation, how much has been thus done in the announcement of truths and principles of action from the bench, which now constitute the treasury of the law! If Lord Mansfield *made* the law merchant of England—which also became that of

America—if Chief Justice Marshall *made* the constitutional law of the United States, as has been charged, how well did they build! Who so rash to-day as to question the amazing skill and complete success of those peerless architects! How many decades, and how many legislatures, composed each of hundreds of men, would it take to establish such principles, and work out such beneficent results, and insure their acceptance by the coming generations!

We are certainly excusable if such reflections as these cause us to “magnify our office” and glory in our vocation. Whatsoever there is of capacity for good in us, can be best developed by an Association like this. We live in an age which illustrates in every department of human action the power of associated effort. In the realm of those moral forces with which we have specially to deal, is not the superior power of associated effort intensified? Whether we like it or not, we must be powerful for good or evil. Great indeed is our responsibility.

There may be differences of opinion as to the character of the age in which we live—whether it is more than ever before a money-loving age; certainly it is a money-getting age, beyond precedent. Perhaps men loved “filthy lucre” in the luxurious days of Greece and Rome, as they now do; but there were controlling influences then against this absorbing power, which do not now exist. The real trouble with us to-day is not the mere love of money as a possession and a treasure; for the pursuit of wealth is not only a right, but often a duty, and the use of it, when acquired, a great pleasure and high privilege; but it is the self-prostration of society before it as a “dignity, a principality, a power.” In this worship is often surrendered talent, learning, every high and noble aspiration, and even the gentler graces and more refined charities of life. Against this deification and absorbing power of wealth, what stronger bulwark can be interposed

than the associated resistance, and the example, of an intellectual and learned profession: powerful in influence, intimate and controlling in its necessary connection with every variety of human affairs, trained to vigorous and independent thought and effective speech? If it but dare assert its dignity and character, there is no social agent which has half its power to curb and reform society. But, to accomplish all this, we must be true, and brave as well. Not only must honor be the guide of our own conduct, but we must make no terms with dishonor—for demoralization often comes not so much from joining in the outright commission of sin, as from the halting, unmanly acquiescence by which we condone it.

The theme is pleasant, and the glow of excitement causes me to transgress.

I close with the testimony of those whose higher claims and greater achievements in the profession justify me in substituting their words for my own: "The influences of our profession are as wide as society; its duties are arduous, refined, delicate, and responsible; its honors and rewards, when fairly sought and earned, may fill the measure of a great ambition; we cannot be too wise, too learned, or too virtuous for it; we can make all knowledge tributary, and yet not transcend its compass."* Still another witness: "I bear this testimony concerning our great profession,—the more I have seen of it, the higher has risen my estimate of its dignity, usefulness, and importance. . . . In it may be found as pure, noble, truthful, and generous men as ever adorned the pulpit or the senate. Below either, it can never fall, so long as those who practice it are faithful to the trust committed to their hands by its great masters."†

* Hon. S. T. Wallis, of Baltimore.

† Hon. William A. Porter, of Philadelphia. Paper on "The Qualifications of the Adviser and the Advocate."



PAPER

READ BY

ROBERT G. STREET.

*How far Questions of Public Policy may enter into
Judicial Decisions.*

"In a government in which the departments are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution. The Executive dispenses the honors; the Legislature commands the sword; the Judiciary has no influence over either the sword or the purse. It may truly be said to have neither force nor will, but merely *judgment*." Thus truly and beautifully wrote Mr. Hamilton with respect to the judiciary department of the grand design in government then proposed by the Constitution of the United States.

But it is questionable if the experience of nearly a hundred years has verified the prediction that the judiciary department of our government is the "least dangerous to the political rights of the Constitution." And yet, as will appear, it may not, in this respect, be necessary to impugn the wisdom of Mr. Hamilton's political philosophy.

From *Marbury vs. Madison* down to the present time, the judiciary department of the Federal Government has been the final resort of political parties on the greatest questions of public policy that have agitated the country.

The history of the origin and development of this superstitious belief in the omnipotence of the judiciary; its supposed power to annul acts of Congress—laws which have received the sanction of both of the other theoretically co-ordinate departments—to fix the limits of independent branches of the sovereign power, and say to them “Thus far and no farther,” cannot fail to be both interesting and instructive to students of politico-legal science throughout the world, of whom, it should not be forgotten, a very large number still look on the government of these United States as experimental and phenomenal. Such inquiry would embrace an examination into the genius of our people, their conservatism and reverence for judicial authority, their revolt against the tyranny of political assemblies so luridly portrayed in the contemporaneous history of the French Republic, as well as the reactionary force incident to successful revolution against the then recent heritage of wrong set forth in the “Declaration of the Independence of these Colonies.”

That the judiciary department should have the power, in “cases” of jurisdiction, to declare its opinion against the validity of statutes, because in conflict with what is deemed by the judges a true interpretation of the Constitution, and, on that ground, to disregard them, was foreseen and intended by the framers of that instrument; but it may be confidently affirmed that at the time of the adoption of the Constitution there was no purpose to vest in the courts power to annul and set aside an act of Congress. No court ever before possessed a jurisdiction so pre-eminent over the political power of a state, and it is inconceivable that it was intended by the philosophers, statesmen, and jurists who framed the Constitution, that the first institution of this novel power on earth should be left to inference and conjecture against the express and fundamental theory of co-ordination in the legis-

lative, executive, and judicial departments of the government. And while the debates on the adoption of the Constitution show that difference of opinion—whether the Constitution was to receive a strict or liberal construction—had its origin there, yet the effect on the other departments and the people of even the mere incidental expression of opinion by the judiciary on the constitutionality of laws in the course of the disposition of “cases” could not then have been anticipated, because the segregation of opposing political parties, so long to control the destinies of the country, on these conflicting theories of construction, was not itself appreciated.

The judiciary has become a factor in the political power of the government, never contemplated in its origin.

Neither Marshall, Kent, nor Story—though advocating with learning and eloquence this power in the courts to annul legislative acts—have ever sought to show the consistency of its existence in one of the departments with the theory of co-ordination in the three departments. They seem content to accept its devolution upon the judiciary as a “happy accident;” and it seems now generally to be thought that the wisdom and impartiality of the judges will always furnish a sufficient guarantee against its abuse, and, perhaps, even against error itself.

Happy the nation from whose history this *a posteriori* argument can be drawn, however obvious its fallacy! Happy the people whose experience shall justify the confidence supposed thus to have been reposed by the founders of the government in their practical sagacity, however hazardous the experiment!

A primitive and original method of exercising this power is said to have obtained at an early day in one of the most southern of our states, where, upon the adjournment of the legislature, and before the beginning of the succeeding terms of the courts at *nisi prius*, it was the custom, at the

meetings of the bar called for the purpose, his Honor presiding, to determine what acts of the last legislature should be regarded as operative, and what ignored as unwise or inexpedient; and thenceforward it was deemed disrespectful to the court to cite those thus set aside.

I trust I shall not be considered wanting in like respect because undertaking to expose a gross delusion which, persisted in, is calculated to bar the progress of our civilization and the development of the science of republican government, and to prevent the modification and adaptation of the public policy of the country to the requirements of constantly changing conditions and relations. Is it possible that, upon the question of the existence of the power in the government to pass an act responsive to those requirements, and to determine whether a particular act is "appropriate means" of executing certain political powers—the sole question in these cases—the decision of the Supreme Court of the United States is forever conclusive, as well upon the other departments as upon its own?

Mr. Bentham, in his universal criticism on Blackstone's *Commentaries*, severely censures all "judiciary" or "judge-made law," or "judicial legislation," because of its alleged tendency to pursue processes of reasoning peculiar to the legal profession; and hence he characterizes it as law made by "Judge & Co.," being evidently of the opinion that the study of this sort of law "tended to sharpen, but not to enlarge, the faculties of the mind." If the practising lawyer could be made to understand that he was anything more than a "sleeping partner" in the concern—that he could even vote as in the sometime meetings of the bar alluded to—he would probably be more acquiescent in its wisdom and expediency than he is generally understood to be. But "judiciary law," in the broad sense intended by Mr. Bentham, includes the whole body of our laws denomi-

nated by the common-law lawyer, "unwritten law." If his criticism was applicable to "judicial legislation," as that term is generally understood, it would not be regarded by the professional lawyer as an objection; for *his* objection is that the *ratio decidendi* in such case is based on supposed considerations of public policy, good morals, and natural justice; the idea of the particular judge what the law ought to be, and not, as it should be, on the ascertainment, upon deduction by legal reasoning and analogy, of what the law is.

Although long a principle of universal acceptance among political scientists, that there can be no liberty without the separation into co-ordinate departments of the legislative, executive, and judicial powers, yet, says de Tocqueville, "I am not aware that any nation on the globe has hitherto organized a judicial power on the principle adopted by the Americans. . . . It has been claimed, but claimed in vain, by the courts of justice of other countries." And the learned and liberal writer speaks eloquently of the power vested in our courts of pronouncing a statute unconstitutional, as "one of the most powerful barriers that has ever been devised against the tyranny of political assemblies."

Mr. Jefferson said that his construction was, "that each department of the government is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the laws submitted to its action;" and he referred to the "Alien and Sedition Laws" and *Marbury vs. Madison*, as instances in which he entirely disregarded, in the discharge of his executive duties, devolved upon him as President, the opinions of the courts upon the questions involved.

The question whether a sovereign power has been granted by the Constitution of the United States is a great public and political question, and the decision of the Supreme Court of the United States has, upon such question, and is entitled as

such to, no other effect than that of mere finality between the parties, with the obligation upon the subordinate branches of that department, the judiciary—of which that court is the head—and perhaps upon all courts whatever, to follow such decision “until and unless” the Supreme Court of the United States shall otherwise decide; that is, shall overrule its own decision.

Any narrow rule of legal construction, any timorous theory of statesmanship, by which it shall be sought to devolve upon either one of the co-ordinate branches of the government the power of determining for the others, or of determining for the people, with whom the ultimate sovereignty resides, questions affecting the grant of sovereign power, is necessarily subversive of that co-ordination of executive, legislative, and judicial power regarded by the statesmen who laid the foundation-stones of the Republic as embodying its peculiar beauty and its superior strength. The only principle of *stare decisis* that is applicable to questions of this nature is uniform practice, consecrated by time and sanctified by common consent. Uniformity of construction is indeed desirable, but not at the expense of the destruction of uniformity of the original design.

The grant of legislative, executive, and judicial power in the Constitution is alike express: “All legislative power herein granted shall be vested in a Congress of the United States.” “The executive power shall be vested in a President of the United States,” and “The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish.”

The distinction between political and judicial power is acknowledged, if not well defined. The judicial power extends to the determination of “cases,” not questions. And if the incidental expression of opinion by the court upon ques-

tions of the nature of those under consideration is indeed the ultimate determination of such questions, while the judiciary feature of our government may deserve de Tocqueville's commendation as presenting "one of the most powerful barriers ever devised against the tyranny of political assemblies," it cannot be said, in the language of Mr. Hamilton, "to be the least dangerous to the political rights under the Constitution."

There is no power in the courts to annul an act of Congress, but only to decide "cases;" there is no chancellor, or *cancellaria*, in the Constitution; and there is no greater warrant in the Constitution, or in the theory of this government deduced from contemporary exposition, for attributing such power more to one department than another. There is no power anywhere to annul an act because deemed unconstitutional. The President may declare that, in his opinion, an act is void because unconstitutional, and refuse to enforce it; and so may the courts; but neither can control the other; and hence it is obviously inaccurate to say that the court finally determines the constitutionality or unconstitutionality of a law. The Legal Tender Acts were declared unconstitutional in *Hepburn vs. Griswold*; but if this were indeed an authoritative establishment that those acts were null and void, vitality and constitutionality could not subsequently have been imparted to them by the declaration of their constitutionality in the Legal Tender Cases in 12 Wallace. If the former was an authoritative declaration of *status*,—was, in fact, anything more than the mere expression of opinion or reasons for the particular judgment—then the latter was judicial legislation by the wholesale; it was to enact a law where previously there was none.

The office of construction is indeed ordinarily said to be a judicial act; but if each department of the government may be truly said to be supreme within its sphere, and to be in-

dependent of the others, it must result that the legislative branch, in the passage of an act, must judge for itself whether political power in a given case is granted or prohibited. And so the President must judge for himself in the execution of the law, and so the court in its administration.

If the functions performed by Congress, by the President, and by the courts are respectively legislative, executive, and judicial, so long as neither invades the province of any other, it is acting within its appropriate sphere; and whether wisely or unwisely, constitutionally or unconstitutionally, so far as affects its own action, it is itself the exclusive judge.

The judiciary can no more annul an act of Congress on the ground of its unconstitutionality than Congress can set aside a decree of the courts because without jurisdiction.

It is, perhaps, in this independency of opinion and of action with respect to the scope and limitations of constitutional power; this separate right and duty of each of the co-ordinate departments; this requirement that each shall view and determine these grave questions for itself, and neither for the other, from its own point of view, and upon its own responsibility, under the influences and by the processes of reasoning peculiar to each, that the greatest safeguard is to be found at once against the tyranny of political assemblies, the ambition of an executive, and the rigidity of the non-progressive and inelastic rules and principles that in general control judicial decision.

Superficially, this may seem to present a scene of discord and confusion, of conflicting views and opposing actions, of constant danger of contact between irresistible forces and immovable bodies; but this is more fanciful than real; and any actual danger inherent in it must be more than compensated by disabling any one department from curtailing the American Constitution of its fair proportions.

A construction of the constitutional powers of the government, concurred in by each of its co-ordinate branches through a long period of time, would be a decision of such a question by a high court of competent jurisdiction, and such a decision as alone would carry with it the weight and conclusiveness requisite to secure general acquiescence. This power claimed on behalf of the courts, and deemed by some so essential to the perfection of a system, which is yet so subversive of our system of co-ordination, has never obtained for itself practically the sanction of such common consent.

The Executive did not acquiesce in it in case of the "Alien and Sedition Laws," or in *Marbury vs. Madison*; and the same department signally dissented from the decision against the constitutionality of the "Legal Tender Acts." The "*Dred Scott*" case was not acquiesced in by Congress or the people; and had the court entertained the case of the State of Mississippi against Stanton, and held the "Reconstruction Acts" unconstitutional, it cannot be doubted that that decision also would have been disregarded in political action. To the conservative rule early adopted by the courts—that a statute should not be declared unconstitutional unless it is clearly so—is largely due the infrequency of such differences.

Many of the rules of construction adopted by courts of law are most useful to a true exposition of the Constitution of the United States; but that all of those rules are applicable, or, if applicable, adequate to a full exposition of the sovereign powers of the government, is denied. True statemanship will diligently explore the debates of the conventions, and the writings of the statesmen who laid the foundations of this government, as the most honored sources of a correct interpretation of the Constitution; yet there is no method of construction in general more repro-

bated by courts. Mr. Jefferson's second canon was: "On every question of construction [of the Constitution] we should carry ourselves back to the time when the Constitution was adopted; recollect the spirit manifested in the debates; and, instead of trying what meaning may be squeezed out of the text or invented against it, conform to the probable one in which it was passed." Mr. Justice Story offers nineteen principal rules for the construction of the Constitution, and speaks slightly of the two canons proposed by Mr. Jefferson.

"The judicial power of the United States shall be vested in one Supreme Court," etc. "The judicial power shall extend to all '*cases*' in law or equity," etc.

What is judicial power? It is the power pertaining to courts of justice; the power to hear and pronounce judgment in cases at law and in equity between the parties and in criminal prosecutions. "The *reasons* announced by the court to sustain its decision . . . constitute no part of the judgment."

If there is no power in the courts to annul an act because deemed unconstitutional, the same reasoning here pursued would import that mere approval of an act by the executive and its enforcement by the court in a case at bar would not conclude the question of its constitutionality. In the leading cases of judicial constructions of the powers of Congress by the Supreme Court of the United States, it happens that the acts of Congress brought in question have been upheld as constitutional. These cases have depended upon statutes expressive of measures of public policy, such as the power to incorporate a bank, and the power to declare Treasury notes a legal tender. Indeed, as constructions of the powers of Congress must mainly be invoked by acts that must stand or fall under the clause, "To make all laws which shall be

necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof," it will readily be seen that the acts themselves must relate to measures of public policy. The question whether a particular act is "necessary and proper, appropriate means to carry out powers enunciated in the Constitution," is not a judicial one. Formerly the power of the courts in England to decide contrary to the statute when the act itself was deemed contrary to "public policy, the first principles of morality or natural justice," was vainly but strenuously contended for by many of the judges. Said Lord Coke, in *Dr. Bonham's case*: "The common law doth control acts of Parliament, and adjudges them void when against common right and reason." But these and like indignant expressions that have in many instances fallen from the bench will be found to have been provoked, in general, by acts of such enormity as make them a just testimony to the humanity of the judges, but detract largely from their weight as authority. Nor is English history without its lesson in presenting to us a picture of the rapacity, servility, and inhumanity of the judges, who "bent the suppliant hinges of the knee, that thrift might follow fawning;" and, attempting to override the statute law of the realm, were met by the moral sense, recognition of natural justice, and traditional public policy inherent in the people, and driven from place and power in infamy and dishonor. On this branch of our discussion the true doctrine in America is well stated by Chief Justice Black, in *Sharpless vs. The Mayor*, 21 Pa. St.: "We are urged," said he, "to hold that a law, though not prohibited, is void if it violate the spirit of our Constitution, or impairs any of those rights which it is the object of free government to protect, and to declare it unconstitutional if it be wrong and unjust. We cannot do

this. It would be assuming a right to change the Constitution; to supply what we might consider its defects. . . . There is no shadow of reason to suppose that the mere abuse of power was meant to be corrected by the judiciary."

In a case in Texas (*Pierce vs. Randolph*, 12 Tex.), the eminent counsel questioned the application of the English doctrine allowing recovery of a wager on a horse-race, to horse-racing in America. I will not do him the injustice to attempt to state his argument; I prefer to quote briefly from it as reported. "I imagine," said he, "our learned judges over the Atlantic have but little conception of a quarter race-track in America. In the expressive language of Parson Brownlow, the quarter track is the shortest road to perdition that has yet been discovered. . . . Its general concomitants are an ox-cart and a barrel of whisky, out of the bung-hole of which flows one continuous stream of drunkenness and profanity. The argument that it is calculated to improve the breed of horses is only applicable to regular turf races, such as the Derby. Diogenes himself would smile at such being the result, could he but see the competitors in speed on one of our quarter race-tracks, groomed by Simon Suggs."

After stating the familiar rule allowing recovery in such case, Chief Justice Hemphill responds vigorously to the argument of counsel as follows: "But, it seems, a new rule has been discovered, by which to test the validity of contracts; and that is, the belief of the jury with regard to this tendency to immorality and breaches of the peace, and this even where such contracts have been declared by the court of the last resort to be valid in law, and to have all the force and efficacy which the law can impart to any contract. No doctrine more subversive of law and of private and public rights could have been devised. In fact, it sets them afloat upon public sentiment, to fluctuate, and rise, and fall with

the ebb and flow of popular opinion, and, when brought to trial, to succeed or fail, not according to established rules of law, but upon the belief, the private opinions, or, in other words, the whims and caprices of the jury before whom they are presented. The most sacred rights—those most cherished by the law—may be frustrated and defeated if, without any regard to the law, a justice of the peace, with his jury, might deem them against morals, good order, or public policy.

. . . It is the duty of both judges and juries to decide on rights according to the laws of the land, and not on their belief of what ought to be law. Their office is not legislative. It is judicial; it is to administer the law as they find it, and not to exalt their own belief or notions above the law, and follow these as a higher code by which the rights of the community are to be regulated or controlled."

General professional opinion has put at rest whatever diversity may have existed on this question, and now-a-days the more a judge dilates upon a subject so vague and indeterminate, and so obviously unsuited to the judicial function as *public policy*, the greater cause he gives for the just suspicion that he is merely

"Praising those things he's inclined to,
And damning those he's no mind to."

But with the enforced abandonment of this claim of jurisdiction to annul laws opposed to their ideas of public policy, first principles of morality, and natural justice, the courts of the Union, with amazing boldness and surpassing ingenuity, have sought to supply its loss by the assumption of the high powers here first noted—another form merely of the undertaking judicially to determine the public policy of the country. And as respects this chief branch of our inquiry, from out the vicissitudes of English and American political and judicial history; consistent with the terms of the Constitution and its contemporaneous exposition; and

alone consistent with the fundamental theory that the departments are equal, co-ordinate, and independent, we reach the clear light, that, upon questions of sovereign power and policy, each department must judge for itself; and over all, the people, through constitutional agencies, in the exercise of their reserved right, may declare, in such case, what is the true intent and meaning of the Constitution, either affirming or reversing the previous declarations of the legislative, executive, or judicial branches.

No question of the grant or prohibition of sovereign power or declaration of public policy should ever be considered settled until uniformity of opinion and action has been reached by the several departments, and not then until the people have made known, under circumstances and conditions favorable to its exercise, and through such time as to assure deliberation, their approval of such concurrence. And this concurrence itself, to be binding, must be reached under the free exercise of the right of independent opinion and action, and not through the influence of the gross delusion that the courts speak on the subject "with the voice as of one having authority."

If it be objected that as to governments, to quote from Blackstone's *Commentaries*, "However they began, or by what right soever they subsist, there is, and must be in all of them, a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside"—which is, indeed, the argument of necessity whereon the rightful exercise of this pre-eminent power by the judiciary is largely placed by its advocates—I reply to this abstract proposition, that the *jura summi imperii* in republican governments reside in the people themselves. Moreover, history affords many illustrious examples of government by conventions, as the German Empire, the Dutch Republic, the Swiss Cantons, and the Achaian League.

If it be further objected that beneficial results can only be hoped for from this process of voluntary adjustment at the end of a long period of conflict and travail, I reply, that no truly beneficial results in the world's history—physical, social, moral, or governmental—were ever achieved by “happy accidents;” and if the period of attainment of these results be deferred, it is because their right development requires it; and dissatisfaction on that account is only a renewed expression of the impatience of man with the slow processes of God and of Nature.



PAPER

READ BY

JOHN M. SHIRLEY.

The Future of Our Profession.

Our profession is one of the necessities of civilization. There is no occasion for lawyers, where the only test of human rights is the will of the strongest.

But society, even in its rudest forms, brings men into relations with each other. For the general welfare, it takes here a little and there a little from the absolute rights of individuals. The process goes on from year to year, from cycle to cycle; for the law as well as science has its cosmic forces. Common convenience and mutual necessities beget the law of custom. As wealth and population increase, these relations become more strained, artificial, and complex.

The law is the result of growth and decay; for in the law, as in everything human, there is an eternal struggle between life and death for the mastery; and therefore the great body of our law, which affects us so closely in every relation of life, cannot be administered with comparative success except through the instrumentality of a picked corps possessing the qualifications which special training and the hard discipline of experience alone can give.

Since Bracton wrote, "Destruction and Reconstruction" have done their work. A great revolution has been wrought,

not only in the structure of the law itself, but in its processes and methods, and in the guilds by whose aid it has been administered.

Then the "law-merchant" was but a name, and the Court of Chancery another. The "custom of merchants" was not recognized by the courts as a part of the common law for nearly three hundred and fifty years; and the stout resistance of the common lawyers to its adoption, which they regarded as a usurpation, was not silenced until the final decision in 1765—one hundred and fifty-six years later. Waltham had not then invented the subpoena which made the Court of Chancery "The deformed transformed." Manufactures and the statute against monopolies were unknown, and the arts and sciences were at their lowest ebb.

The profession, as it has existed in England for centuries, divided into two great branches, was then unknown. The rigid policy of the common law was to compel all parties to appear in person, and, with the aid of the court, try their own causes. First came advocates, variously designated,—known as a standing order prior to 1255; as barristers, in a restricted sense, as early as 1291; and since, as barristers of various degrees, or as counsel. Potential as this body has been, it was the creation not of statutes, but of custom. Barristers were not admitted to practice by the courts, but were called to the bar by the Inns of Court. Probably no body of men equally potential were ever so little subject to statutory regulation.

Attorneys in fact, as contradistinguished from attorneys at law, have existed from the dawn of the common law. At a later day, in certain cases of emergency, a plaintiff or defendant, with the sanction of the court, might select some friend or deputy to take his place. The parties had the right to employ such agents to represent them in the king's courts, provided they first obtained a license from the Crown

to appear in that particular cause by such attorney, though sometimes, by "special grace," a party was allowed to select any person. This was such a source of revenue, that there were four hundred of such attorneys in the reign of Edward III.

At a later date, for the purpose of freeing litigants from this burden, Parliament provided that any person might appoint any other person his attorney without fee or license. They were still, however, nothing but agents in a particular cause. The result was that litigation was largely increased, and the parties litigant were handed over as prey to this unlicensed horde. To remedy these evils, Parliament, four hundred and eighty years ago, provided in substance that none but "good and virtuous" men, "learned, and of good fame," should be admitted and sworn as attorneys; that such should be examined by the justices, and their names put upon the roll; that in case of the death of any attorney so enrolled, the justices were in like manner to "make another in his place;" and that "if any such attorney be found in any default of record or otherwise, he shall forswear the court, and never after be received to make any suit in the court of the king."

The substance of this statute was borrowed from the French and the Roman law. Its vital principle is the bed-rock upon which all subsequent legislation in Great Britain and the United States rests. By this, attorneys for the first time ceased to be attorneys in fact, and became attorneys of record—officers of court, subject to its control and supervision. In 1871 they numbered 13,824 in the United Kingdom alone.

The essential differences between the two branches of the profession were:

The employment of attorneys was pecuniary, that of barristers, honorary. Attorneys, like other employés, might

demand and receive compensation; barristers could not demand anything, but might receive gifts. Attorneys might recover their compensation *in assumpsit* or debt; barristers had no remedy at law or in equity. Attorneys were liable for neglect of ordinary care and diligence; barristers were liable only in case of *mala fides*, and not always for that. The attorney might confer directly with his client; the barrister might not. The attorney took charge of the preliminary proceedings, made his brief of the law and the facts, with notes of the testimony, selected his leader, and acted as a go-between between client and counsel; the barrister prepared the pleadings, and took the charge and responsibility of the cause in court.

The English bar did not, as has been said, reappear with the colonists on these shores. The Dutchmen of New York and the people of the Jerseys, prior to their annexation to New England in 1688,—and, in fact, until 1708,—had little occasion for lawyers; Penn and his Quakers, still less; Roger Williams and his followers had none at all. The Separatists of Plymouth Colony sent home the only person from the Inns of Court who attempted to practise within its limits. Some of the most eminent members of the colony of Massachusetts Bay had been thoroughly trained in the Inns of Court. They did not, however, attempt to practise, but utilized their knowledge for the benefit of the Bible commonwealths. They too sent home the only educated lawyer in their midst, and the result was that the ancient English practice was from necessity revived. The parties were required to appear in court and try their own causes. They might ask a friend to assist them, and often did. "Patrons" came in in their aid, as was the case under the Roman law. Nearly every man who could read and write, and many who could not, as in the mother country, when licenses were swept away by statute, set up as an attorney in fact.

"Chimney-corner law" reigned, except where the mandates of the general court or some other court governed.

At the trials for witchcraft at Salem in 1692, an old man, Giles Corey, "standing mute," was pressed to death. Then, and not unfrequently both before and after, the minister took his seat by the side of the judge, and took his turn in haranguing and hounding the jury into returning a verdict contrary to their consciences and against their judgment. In these famous trials no lawyer participated either as attorney, counselor, or judge. Had there been an educated bar, the result might, and probably would, have been different, and the old commonwealth might have been spared the sackcloth and ashes which she has so often worn because of the memory of those trials.

But as time wore on and the anglicization of the colonies became more complete, the attorneys and barristers of the English bar appeared distinctively in New York, New Jersey, Pennsylvania, Massachusetts, and some of the other colonies; but as there were no inns of court from which the barrister could hail, they were admitted to the bar, like attorneys, by the court. "Barristers' habits" were taken in Massachusetts as early as 1760; but in some of the colonies, as in New Hampshire, no distinction between the two great branches of the profession was ever known, though Judge Story, whose notions were peculiar and who was inclined to exalt the functions of the court, in the Circuit Court of the United States for New Hampshire, conferred the degree of serjeant-at-law upon Jere Mason and Judge Smith, and that of barrister-at-law upon Daniel Webster and others. (Dartmouth College Causes, pp. 151, 152.) The distinction was kept up, however, in New York, New Jersey, and several other states, until late in the present century. It was perpetuated in the federal courts by a rule established by the Supreme Court of the United States in 1790, and which prevailed till

1858. There is now no distinction in this country; every attorney is a counselor, and every counselor an attorney. There are lawyers who make patent cases a specialty, but they are comparatively few, and confined to the larger cities. The same is true to a more limited degree in admiralty, and in business at the departments, and the like; but, in general, every lawyer in the country is liable to be called upon at any moment to frame a "Holmes' note," a justice writ, a bill in chancery; to solve some intricate problem in conveyancing, to prepare a cause for trial by jury, to sum it up, or to argue questions of law before the highest judicial tribunal in the land.

The legal profession in the United States has always been weaker numerically than either of the other so-called "learned professions," but in general has always been regarded as more potent, for it has lifted with the longest lever the material interests and passions of men.

A few brief summaries may show the position of each with reference to the others and to the population of the whole country.

In 1850 we had 23,939 lawyers, 26,842 clergymen, 40,564 doctors; in 1860, 33,183 lawyers, 37,524 clergymen, 54,583 doctors; in 1870, 40,736 lawyers, 43,874 clergymen, 62,383 doctors; in 1880, 64,137 lawyers, 64,698 clergymen, 85,671 doctors. In 1850 there was one lawyer to 964 people, one clergyman to 864, and one doctor to 569; in 1860, one lawyer to 947 people, one clergyman to 837, and one doctor to 566; in 1870, one lawyer to 949 people, one clergyman to 879, and one doctor to 618; in 1880, one lawyer to 782 people, one clergyman to 775, and one doctor to 585. The number of lawyers in the United States prior to the adoption of the Federal Constitution cannot be determined with exactness. It may be done, however, approximately.

It is known that for a long series of years New Hampshire

had more lawyers in proportion to her inhabitants than any other province, colony, or state. In 1767 she had one lawyer to 6,600 people; in 1783, one to about 5,000; in 1787, one to 4,600; in 1800, one to 2,300; in 1810, one to 1,800; in 1820, one to 1,200; and in 1830, one to 1,100.

The number of lawyers in the states at the close of the Revolution has been variously estimated at from 300 to 700. Only 136 attorneys had been admitted in New York by royal license prior to the Revolution, and many of these were dead when hostilities broke out. In 1880 the three professions numbered 214,506. There were 75 female and 64,062 male lawyers, 165 female and 64,533 male clergymen, and 2,432 female and 83,239 male doctors; 64 of the 75 female lawyers were under sixty years of age, and 11 were sixty years of age and upwards; 60,177 of the male lawyers were under sixty years of age, and 3,885 were sixty years of age and upwards; 140 of the female clergymen were from sixteen to sixty years of age, and 25 were sixty years of age and upwards; 55,639 of the male clergymen were between sixteen and sixty years of age, and 8,894 were sixty years of age and upwards; 2,268 of the female doctors were between sixteen and sixty years of age, and 164 were sixty years of age and upwards; 75,006 male doctors were between sixteen and sixty years of age, and 8,233 were sixty years of age and upwards. Of all the professions, 193,294 were under sixty years of age, and 21,212 were above that age, of which only 200 were females; 60,342 lawyers were native born, and 3,795 foreign born; 51,967 clergymen were native born, and 12,731 foreign born; 77,092 doctors were native born, and 8,579 foreign born. Of the three professions, 189,401 were native, and 25,105 were foreign born; 1,008 lawyers, 2,516 clergymen and 1,021 doctors were from Ireland; 791 lawyers, 4,301 clergymen, and 2,640 doctors were from Germany; 948 lawyers, 2,589 clergymen, and 1,748 doctors were from Great Britain; 89 lawyers, 598

clergymen, and 176 doctors were from Scandinavia; 559 lawyers, 930 clergymen, and 1,520 doctors were from British America; 400 lawyers, 1,797 clergymen, and 1,474 doctors were from "other countries."

It will be readily seen that less than one-sixteenth of the lawyers, about one-fifth of the clergymen, and about one-ninth of the doctors were foreign born.

Our population in a century has gone up approximately from 3,000,000 to 54,000,000. A century ago the legal profession numbered a few hundreds; to-day we muster 70,000 strong. The rate of increase in the population must diminish as we approach the period when our vast domain is substantially taken up by actual settlers, but there is no discernible reason why at the end of another half century we should not have more than 200,000,000 population and upwards of 200,000 lawyers.

With the light of the past to aid us, let us turn to the future of this great, growing, and powerful profession. Its prime duties are two-fold: on the one hand to "hold the fort" of constitutional liberty; and on the other to adapt the machinery for the administration of justice to the reasonable requirements of the age in which they live.

No lawyer can do his part in this great work and have "proper directing influence with his brethren," to use the language of Chancellor Kent, without natural and acquired power. He must have integrity, fair ability, great industry, and special training. A lawyer needs first of all, moral honesty and moral courage. People in other occupations often "succeed," as the world phrases it, without these. It requires but little legal reason or moral sense to pick locks, break vaults, or to bully weak men and timid women out of their rights, and oftentimes but little more to rob the living and plunder the dead. But a lawyer must be honest first with himself, because without that he cannot be honest with

others. Many a difficult cause has been determined by the moral weight of counsel.

What system of special training is the best? Here the house is divided against itself. One side insists that it must be had in a law school, and the other that it must be had in a law office. Neither is right. Schools and offices can only supplement, they cannot supersede the work of the Almighty. "Books," said the man of continental mind, "make drill-masters, but God makes generals." "Eating terms," as the benchers of the Inns found out long before the adoption of the rules of 1853, does not make lawyers. No more does one become such by lounging about some office for three or more years. The thing, and not the name, is the test. There is no place for acquiring a mastery of general principles with apt illustrations like a thoroughly equipped law school. There is no place where a knowledge of men and things and the use of the machinery of the law can be so thoroughly mastered as in a law office, actively engaged in general practice. There every student ranks up according to the test. In a few months after his admission he is taught that there is something for him to do. Each in turn becomes book-keeper, cashier, and acts in a general administrative capacity. In turn he must hunt records, look up testimony, prepare the smaller causes, marshal his authorities, and argue his cases. It teaches him what responsibility is. It gives him confidence; for he knows that whenever an emergency requires, he can have the support of the junior partner, and whenever unexpected difficulties thicken, he can bring to his aid the whole force of the office, with the trained regular at its head.

The great obstacles in the way of the profession are, first, the condition of our statutes; second, of our case law; third, the rampant tendency to judicial legislation; and fourth, the commercial spirit which has entered the profession and

threatens to reduce it from a guild to a mere trade for the getting of money.

The deterioration of the statute law, both in state and nation, has been going on for years, and steadily grows worse. The decent legislation is largely about trivial matters, which should either be regulated by the municipalities whose interests are affected, or by general legislation. The dishonest legislation is largely purchased and is mainly the work of skilled specialists, doing one thing under the guise of doing another and entirely different thing. This cannot well be bettered until the moral sentiment of the community is educated up to a higher standard, so that they will refuse to elect, or discrown if elected, marketable legislators; nor until the task of framing those laws, which are to affect the entire community, can be committed to honest and intelligent men, trained for that purpose, and paid by the public for their services.

In my own state, neither the profession nor the courts would know where they were if the modern statutes were not based upon old foundations. For generations prior to the Revolution, our public statutes were framed by the king's attorney general or his assistants. These men were either trained in the Inns of Court or were otherwise thoroughly equipped lawyers. One man held the office of attorney general for thirty-six years. For many years after the Revolution, in general the same men, or those who had been trained under them, did the same work. As late as 1822 the entire probate law of the state was recast by two eminent judges of probate. The chairman of this committee, Charles H. Atherton, was one of the foremost men of the country, and had been judge of probate for thirty years. As late as 1832 the Judiciary Act, and in particular that on which the entire equity jurisdiction rests, was framed by Judge Parker, afterwards chief justice, and long

professor at Harvard Law School. The character of modern statutes is often made the excuse for flagrant judicial legislation.

Confusion worse confounded reigns in case law. For this there are several reasons:

1. We have a multiplicity of legal tribunals.

From the great extent of our territory and the unprecedented increase of our population, these must necessarily and rapidly increase. We have now thirty-eight states, and are soon to have more. These all have complete judicial systems. Each state, besides special tribunals, which are in effect courts of claims, or special courts of last resort, has at least a system of magistrates' courts, a system of courts of first instance, and at least one court of last resort. The pressure of business is such that some of these states have been compelled to resort to commissions—extra courts of final jurisdiction. In one instance, separate tribunals have been created for civil and criminal causes, and that of California has been invested with a triplicate action, by which it sits first in two sections and then as a whole. Several other states have an intermediate tribunal, which is a court of final jurisdiction in a very large class of causes. We have eight organized territories and one unorganized territory attached for judicial purposes to an organized territory. All these have at least magistrates' courts, the courts of first instance, the supreme law court, and over all the Supreme Court of the United States. The District of Columbia has all these and something more. In the federal system proper, besides the special commissions, the department tribunals, and the court of claims, we have about sixty district courts, nine circuit courts, and over all the Federal Supreme Court.

All these tribunals are a large portion of the time in a state of constant activity. Their very number necessarily

destroys the unity of the law. Sluiced through hundreds of mouths, it becomes contradictory and chaotic. If there were to be no changes, we might endure the present condition of things. The trouble is, the work has only fairly begun.

2. As a rule, the dockets of the court sitting *in banc* are so over-crowded that the work cannot be done as it ought to be.

Illustrations are hardly needed, and yet a few may be pertinent. A few years ago the highest court of one of the foremost states of the old thirteen sat in a most important division. Four hundred and fifty causes stood in the paper for argument. The court consisted of five judges. They sat for seven weeks, and disposed of four hundred and twenty-five of these causes. Assuming that the court sat every week-day for arguments; that the judges did not work on Sunday; that every judge participated in the decision of every cause, and wrote his share of the opinions (which would all seem to be violent presumptions), more than ten causes were heard and decided, and each judge wrote two opinions every day of the term. In fact, the Chief Justice wrote one hundred and sixty-two opinions, or at the rate of about four a-day. What time could have been given intelligently to the arguments or to an examination of authorities? It is said that the Court of Appeals of the State of New York decide about five hundred causes annually, and once or twice have decided about seven hundred; and yet the state has twice been compelled, by constitutional amendments, to relieve this overburdened court by commissions of appeal. It is notorious that these enormous labors broke the backs of four strong men on the bench, of which Judge Church was the head. It is said that the Supreme Court of Illinois, before it was relieved by the appellate courts, decided about seven hundred causes one

year, and nearly nine hundred another. It is one of the mysteries to the profession why the rest of the court did not die with Judge Breese, or resign with Judge McAllister.

Two lamentable results flowed from this state of things. Judges not unfrequently forgot that their prime mission is to administer justice, and that every suitor has the right to have his cause fairly and fully heard. They came to regard themselves as a species of telegraph operators, whose prime mission is the dispatch of business. They guillotined one party or the other, in order to diminish the docket by laying some new head on the block.

The assignment of opinions is practically the decision of causes by a single judge, as a rule. Other things being equal, three judges are better than five, and five better than seven. The additional numbers only retard in consultation. Their utility consists mainly in the fact that they form an additional clerical force, who can examine more causes, hunt up authorities, and write more opinions. A more thorough examination of a cause can undoubtedly be made by one man than by three, five, or seven; but he is far more liable to err, because he is liable to be influenced by his biases, his prejudices, or his peculiar views. He has not the opportunity to correct his judgment by the intelligent judgment of other men who have examined the questions as carefully as himself, and from another stand-point. Where causes are thus assigned, in eight cases out of ten the assent of the others is merely formal. The instances are very many in which shipwreck has thus been made of the law. The Supreme Court of Pennsylvania has long been one of the ablest judicial tribunals in the Union, and her judges noted for their frankness. In *Schrivver vs. Meyer*, *Weidman vs. Maish*, *Hutchinson vs. M'Clure*, and *M'Konkey's Appeal*, we have marked illustrations of the evil referred to. Doctrines which had been settled from the foundations of the state, and long lines of

decisions where the doctrine of *stare decisis* should prevail, if anywhere, had been overturned and trampled under foot, if we can give credit to judges Black, Gibson, and other eminent jurists, because "the pressure of business left little time for consideration," and the judges "were compelled to go at railroad speed," and to depend upon the judge who prepared the opinion "unseen by the rest of the court before it was delivered." There is hardly a state in this Union in which the same thing has not been repeated in one way or another.

No one will be likely to question the careful conservatism or great ability of Chief Justice Shaw, or that of the eminent judges who were his associates. *Elliott vs. Stone*, 12 Cushing, 174, was decided at the October term, 1853, Chief Justice Shaw delivering the opinion. It was a landlord and tenant case. The same case between the same parties was decided at the October term, 1854. This opinion was also delivered by the Chief Justice. The facts in both cases are precisely the same, with a single exception, and that is expressly stated in the last opinion to be immaterial. The two decisions are directly in the teeth of each other. The last opinion contains no reference whatever to the former one, and it is evident that the court had entirely forgotten both the former case and the opinion.

Not to be outdone by his brethren in Pennsylvania and Massachusetts, Mr. Justice Bell, a judge of great learning and ability, in *Hazeltine vs. Colburn*, 31 N. H. 466, another landlord and tenant case, decided the same point both ways in the same opinion, to the great bewilderment of succeeding judges.

Sometimes a judge who prepares a minority opinion forgets that it was not the majority opinion, and forthwith it goes down in the reports as evidence of the law of the land.

A new practice has grown up among judges during the last thirty years which is very pernicious. A judge of ample means goes upon the bench. He is, or becomes, a favorite of society. As such, demands are made which encroach seriously upon his time. Having the means, he employs another lawyer, nominally as his clerk, to transform his notes into opinions, and reinforce them with arguments and authorities. Sometimes these short notes are simply judgment for the plaintiff or defendant, and the luckless deputy judge finds himself at his wits' end to know whether he shall write up an opinion for the plaintiff or defendant. In *theory*, these opinions are always considered carefully afterwards by the judge who, in the language of an eminent judge, "takes the responsibility of the opinion." In other cases the same judge, and for the same reason, employs in like manner a clerk to examine the causes assigned to him, to ransack the precedents, and, as it is termed, block out opinions in the less important causes, in order that his employer may reserve his strength and leisure for those of a more important character. In this way new contributions are added to the law. For these reasons and many others, the reports are not always trustworthy evidence of what the decision was or the law is.

3. We have a multiplicity of reports, and they crowd upon us like the pests of Egypt.

A century ago there was not a single volume of reported cases published in the United States. Ninety years ago there were but two small volumes. To-day we have at least 3,100 volumes. They are increasing at the rate of about 100 volumes annually. The United States Digest for 1882 culls from 107 volumes. At this rate, with its natural acceleration, how shall we stand a century or even fifty years hence? But this is not all. Our courts constantly turn to the reports of the mother country and her dependencies. These number

about 2,400, and are rapidly increasing. The modern British reports, it is true, are in general of little account. Our transatlantic cousins have a passion for statutes. The famous Grecian explorer, in excavating the hill of Hissarlik, found seven cities, built one upon the ruins of the other. But this is nothing in comparison with the British statutes. Three entire systems of bankruptcy, with no end of amendatory acts, have been swept away, and before long another must follow in their train. Parliament to-day is engaged in siamesing together two systems of bankruptcy as opposite in principle as the poles. The foundation statutes in many cases have been amended, recast, and reconstructed again from ten to thirty times. These statutes have sometimes been piled in disjointed fragments, "Pelion upon Ossa," upon the foundations of the common law, until the task of discovering the primitive formation is about as tedious and difficult as the exhumation of Pompeii or Herculaneum. The modern decisions are therefore largely based upon the Winding Up Acts, the Employers' Act, the Local Management Act, the Bankruptcy Act of 1869, the Bankruptcy Rules of 1871, the Rules of 1875, the Common Law Procedure Act, the Land Clauses Consolidation Act, the Settled Land Act, the Fines and Recoveries Act, the Judicature Act, and a great variety of others; and therefore are neither in point nor applicable here. But every judge and every lawyer in active practice must examine these authorities now and then or he will miss some masterly judgment resting entirely upon common law or equitable principles; yet it is utterly impossible for any judge, and far more so for any lawyer in active practice, to examine with care the great bulk of English and American decisions, except as causes arise. Few things are more absurd to any good lawyer or judge than the idea that, with a mass of other work pressing upon him, he can read, much less understand, two or three volumes of reports a week.

The burdens of the lawyer engaged in miscellaneous practice are more onerous even than those of the judge. His labors in causes *in banc*, as respects matters of law, are substantially the same. Besides this, one-half of his time is taken up with conferences with clients, in the routine and administrative parts of the business, and in the extensive labors involved in the preparation and trial of causes which involve questions of fact.

4. Whenever any man, possessed of mental brawn and charged with the execution of enterprises of great "pith and moment," finds a river or mountain in his path, he bridges or turns the stream, canals the cut-off, squirrels through the cañon, flanks the mountain, or, in the last resort, tunnels it. Judges do the same thing; and this is judicial legislation. We were all taught that it was the duty of judges to declare but not to make the law. We all know this is one of the resplendent fictions, without which it seems impossible for an Englishman to administer law, government, or anything else, and which has long cheated the reason by beguiling the imagination of men.

Mr. James Fitzjames Stephen, in his *View of the Criminal Law of England*, pp. 326, 328, says: "The fact that, under the fiction of declaring the law, the judges in reality make it, has been recognized by every one who has studied the subject with candor and intelligence, since the days of Bentham, at least. . . . The English judges have always formed one of the best subordinate legislatures in the world." And his real objection is that this legislation is necessarily *ex post facto* in its character. Congress cannot make *ex post facto* laws, nor, in general, can the states make those which are *ex post facto* in the technical sense, but the court can do so. The legislation of the court rivals that of the statute factories in quantity, and not unfrequently exceeds it in importance.

Such is the condition. A remedy, partial or otherwise, must be had in the near future. What shall it be?

We are told, on the one hand, that the elasticity of the principles of the common law, and, on the other, that codification, will prove a sovereign panacea. We have had the first in effect since the existence of customary law, and the latter since decretal or statutory law existed. We shall have them till the Judgment Day. Codes may accomplish much within a single state, but they must necessarily be supplemented and modified by construction. General uniformity is as much to be desired as uniformity within a particular state. The difference on fundamental questions shows that legal reasoning, as it is termed, is grievously at fault. In certain states the prosecution, where it is alleged that the accused was insane, must satisfy the jury, beyond a reasonable doubt, that he was sane, or he must be acquitted. In others it is held that the prosecution must satisfy the jury by a balance of probabilities; and in others yet, that insanity is an affirmative defense, which must be made out by the prisoner. In one portion of the Union the contract embodied in a Holmes' note is valid against creditors, but the Supreme Court of the United States has held it to be utterly worthless, and in New York the Court of Appeals has settled that it is both valid and invalid. In Massachusetts, an instrument which in other respects is a promissory note, but which recites that it is payable on or before a certain day, therein named, is not a negotiable note; but in Michigan and several other states it is otherwise. A stipulation for the payment of attorney's fees is often appended to what would otherwise be a note of hand. Several states hold that the stipulation is valid and destroys the negotiable character of the instrument; others, that the stipulation is valid and the note negotiable; others yet, that the stipulation is void, and therefore the note is nego-

tiable. Unfortunately for signers, notes payable with interest sometimes mature. The courts of fourteen of the states hold that the contract rate of interest governs after maturity, while the courts of ten states hold that the statutory rate governs, and the Supreme Court of the United States is in general accord with this view.

An eminent member of the federal judiciary has recently informed us that Lord Holt, in enlarging the common law, "established the negotiability of bills of exchange and notes." Other eminent jurists have told us that the latter is due entirely to the statute of the 3d and 4th of Anne, which practically took effect May 1, 1705. Others yet, that this effect had been given them by a little coterie of goldsmiths in London, during the twenty or thirty years' controversy with Lord Holt, prior to this act. Lord Holt was born on December 30, 1642. He became Chief Justice of the King's Bench in April, 1689, and died in March, 1709. Queen Anne was born February 6, 1664, and ascended the throne in 1702.

On August 16, 1631, the General Court of Massachusetts Bay enacted "That any bill assigned to another shall be good debt to the party to whom it is assigned." This brief but comprehensive statute was expanded by the same body in 1647, so as to provide "that any debt or debts due upon bill or other *specialty* assigned to another, shall be as good a debt and estate to the assignee as it was to the assignor, at the time of its assignation; and that it shall be lawful for the said assignee to sue for and recover the said debt due upon bill, and so assigned, as fully as the original creditor might have done; provided the said assignment be made upon the back side of the bill or specialty."

This statute was subsequently amended in some particulars. Either by express enactment or by virtue of the law of custom, this principle became a part of the law of

Plymouth, and of the other colonies which were largely the result of the outflow from the Bay Colony, and of those which were from time to time annexed to that colony.

Many a gifted student has been sorely puzzled in attempting to find out how Lord Holt did this, by stoutly deciding that it could not be done, or how the goldsmiths could have done this before such notes existed, or how we are indebted to Lord Holt or Queen Anne for a state of things which existed on these shores before either of them were born.

In *People vs. Baker*, 76 New York, 78, the Court of Appeals smote with heavy hands one of the corner-stones of society, by holding, in effect, that there could be a husband without a wife; or, to be more specific, that a man could be convicted of bigamy for marrying a second wife while the first wife had, *quoad* herself, been lawfully divorced by a court of competent jurisdiction, and rightfully remarried.

On no subject is uniformity more desirable than in the matter of insurance; and yet between underwriters and courts it became, years ago, "The Great Dismal Swamp" of the law of contracts.

Relief can only be had from legislative hands, and it may be found quite as necessary to codify underwriters and judges as the law.

The law of common employment may be tersely but roughly summarized as follows:

In England, the master is not liable for the negligence of a co-employé, because the contract so provides; but here, in general, it is so because the contract does not provide that the employer shall be liable; and yet, in terms, these contracts are precisely the same.

First, the rule that the corporate master could only act under the common seal was discarded; then we were told

that the master was only liable because of the fiat of the directors; then that the rule should not be extended; then that the master was liable under the doctrine of *alter ego*; and then that the latter doctrine must be applied in all cases where it was the duty of the master to be present.

It must be a bold man who would undertake to tell where the doctrine of common employment ends, and that of the master's duty to be present begins, in any state in the Union.

Much of this trouble has arisen from the fact that judges have often failed to perceive that the rule first laid down here in Farwell's case, was established by a great and wise legislator as a species of protective tariff for the encouragement of infant railway industries.

It was a harsh, but a plain and simple, rule. Pressed by considerations of humanity and public policy, the courts began, step by step, to relax the rule, and chaos reigns.

Upon a kindred point the cases are nearly as diverse.

Where a conductor kissed a lady passenger without her consent, C. J. Ryan (17 Am. Rep. 504) held that it was the duty of the master to be present—and the corporation smarted in damages.

Another great court, in a memorable case, held, in effect, that the master owed a passenger the duty to protect him neither from wanton insult nor pillage.

As judges sometimes say, the line had to be drawn somewhere, and at the last advices they seem to have drawn it at kissing.

A great body of constitutional law—in the American, not in the English sense—has grown up in this country. It must necessarily increase more rapidly in the future than in the past. It is quite as contradictory as any other. In New Hampshire, a man may constitutionally be made guilty of a crime if, on his own premises, in a peaceable and orderly

manner, he sells milk or pies within two miles of an incorporated camp-meeting. In Kentucky, the law is precisely the reverse, and yet nobody has been able to discover any difference in the constitutions of the two states. The New Hampshire judges have not yet told us why, if the principle is sound, it may not cover the whole state; nor whether a man can, in like manner, be treated as a criminal if he raises the cows which produce the milk, or plants the trees and sows the grain whose fruits enter into the pies.

But we grow weary as we contemplate the long list that might be enumerated.

What we need is a Frenchification, so to speak, of the Anglican law as to civil causes. In the days of the Roman and feudal law the English and French systems drew from the same root. The two soon after began to diverge, but in latter years they have been drawing closer together. The Judicature Acts are primarily French, with English veneering. The difference between the two are partly arbitrary and partly the result of race and training. The English blood moves slowly, the French quickly; the English lawyer looks backward, the French lawyer forward; the first impulse of the Englishman is to look for precedents, and that of the Frenchman for principles; the Englishman looks back to see what has been done, and the Frenchman to ascertain what ought to have been done; the former gives more liberty and license, and the latter—political considerations aside—speedier and greater justice; the French system discards juries, the English retains the traditionary habit, but trends Frenchward.

Trial by jury in criminal causes has been the bulwark of English liberty, but not for the reasons usually assigned. Drawn from the people, as a rule, it has stood between them and arbitrary power. It has done this not because the juries

were learned or wise, or because there was some magic charm in the number twelve.

The mother country has always had two parties,—the Crown or some favorite heading one, and somebody else, another. The leaders of each in turn sought to rob or murder the leaders of the other. The machinery of justice was the handiest for this purpose. Whenever the juries were fairly drawn they would represent both parties; and, in general, men would not convict men of their own party for political opinions and conduct. In a vast majority of civil causes, as every sensible lawyer knows, the common jury has simply been an automaton of the court, finding as the presiding judges directed.

A brief constitutional amendment on a single point will enable us to adapt our judicial machinery to our needs. An outline of the procedure may be:

1. In any case, legal or equitable, a rule upon the defendant issuing, as of course, in the form of a brief summons to show cause why judgment should not be rendered against him, followed by a copy of the verified statement of the plaintiff's claim filed in court.

2. In case of non-appearance, judgment for the plaintiff on the verified claim, unless, for special reasons, a judge orders a hearing in damages, as on default.

3. Upon an appearance, an answer setting up in detail the verified statement of the claim, legal or equitable, of the defendant by way of defense, set-off, or counter-claim.

4. Trial and report by a single judge, or, in an exceptional case, by three.

5. Revision on this report by the court of last resort of those questions of law upon whose decision the case necessarily depends.

6. The trial court to open the windows and let in the light by the admission of all testimony now deemed competent,

and, in addition, any other which would throw any light upon the issues.

The English rules of evidence were largely artificial, and based upon the religious doctrine of the total depravity of man. Until the reign of Bloody Mary, no person charged with crime had the right to show by testimony that he was innocent, and it is but little more than half a century since he had the right to counsel. It is only a few years since, in many jurisdictions, the accused has been allowed to testify in his own behalf. No party to the record or person in interest could be allowed to testify. These and other rules have disappeared. We cannot go back or remain stationary. There is but one thing left for us to do, and that is to go ahead.

The only real objection arises from a new order which has sprung up in this country, and which may be termed the highwaymen of speculative finance. When capital discards its conservative character, and takes on that of a predatory brigand, in the end it will be treated like all other brigands. It often hides itself under the guise of an artificial person. It seeks to control, as far as possible, the Treasury, and regards as legitimate the purchase of legislative bodies, and, as the Wisconsin phrase is, the propitiation of "the feelings" of judges. It is said that judges may not deal justly between such and the people. Let their lot, then, be cast with the criminal classes. Give them the ancient trial by jury, restore wager by battle, do what you please; but this is no reason why nine out of ten litigants should be deprived of what they need.

My native state is small, and limited in population and resources in comparison with the great commonwealths represented here; but I trust that I may be pardoned for summarizing the history of the experiments we have been trying

for the past thirty years, for the reason that trial by jury in civil causes, for more than two hundred years, has represented more to her people than it could possibly to any other, while to-day it represents far less, and is but little more than a memory. Unlike other New England commonwealths, it was settled by business men and the daring and adventurous spirits who, by some irresistible law, are impelled to seek an exposed outpost on the frontiers. For more than a century every title deed was written in the blood of some member of the household. In 1680 royal power made it a province, against the will of the people, for the purpose of enabling the royal favorites to rob the colonists of all they had—their lands. To sweeten the bitter draught, the colonists were temporarily allowed to hold the leading offices and play at legislation. The township system—pure and undefiled in fact, if not in form—had existed from an early period.

The first legislature framed a code with the all-important provision that the jurors should be selected in open town meeting. Two years later this was overturned by the Crown, and the British jury-packing system substituted for it. This left the colonists in a state of chronic rebellion, though they generally kept within the forms of law, until seventy-two years later, when they forced the Crown to restore that great right. The result was that the jury-box became the most thoroughly representative body that ever existed. Through the township machinery the ablest men took their places in the jury-box. The place of a juryman was a post of honor, and especially in the higher court: that of a foreman of still greater consequence, and he was often a better soldier, an abler business man, a wiser legislator, and a better judge than any of the Crown judges who occupied the bench in ante-revolutionary days. The same general state of things continued long after the Revolution. The jury in this way

became practically, in a large majority of cases, the supreme court both of law and equity.

After 1802, under Chief Justice Smith (a jurist of the Kent stamp), the law began to assume a more scientific character, and this infringed on the powers before exercised by the jury. But there was no noticeable depreciation of the old standard in the jury-box until after 1830. From that time it sank slowly, though but little in the mountain counties until after 1854, when the Know-Nothing crusade carried a flood of driftwood into jury-boxes never seen there before. Since then clear-headed, energetic men, who are fit for jurors, have, as a rule, kept out or got out of the jury-box. For the next twenty years the tendency was downward, although professional jurors were unknown. Verdicts were set aside on grounds which never touched the marrow of the case, and new trials for misdirection were frequent. Litigation had become more complicated. The trials had been steadily growing longer, and the expenses greater. In one of his charges in 1807, Judge Smith stated that an adjournment during the trial of a cause had been unknown until a short time previous. In one of the last causes in which Franklin Pierce led for the defendant, in 1852, before he became President, the trial lasted forty-eight days, more than two hundred witnesses were in attendance, and the judgment was for less than \$40. The result of this condition of things was the legislation to which I am about to refer. In 1855 the statute provided that where the parties agreed in writing, the judge instead of the jury might try the cause and make report of his findings. For years this was little heeded, but it gradually grew more and more in favor. The docket was still crowded. The statute of 1874 provided that every judge, unless it was shown to be inexpedient, might send any case to a referee, whose report was made *prima facie* evidence before the jury—the county paying a reasonable compensation for the referee. These referees were nominally

selected by the court, but in reality by the opposing counsel. They were generally judges, ex-judges, or lawyers of recognized standing. As a rule, there was one referee, but in exceptional cases the parties were allowed three. The result was that jury trials practically ceased, and every village became a special county seat. Few men were bold enough to try a cause before a jury against the weight of a referee's report. At last a divided court cut out the heart of the act by holding the *prima facie* clause unconstitutional.

By the statute of 1876, referees were made final judges of the facts, where the parties waived the right to a jury trial, and the final judges in all other causes sent to them. In 1876, for the purpose of furthering this policy, a constitutional convention deliberately took away the right of trial by jury, except where the title to real estate was involved, and the "value in controversy" was less than a certain sum. This was ratified by the people in March, 1877, and took effect August 1, 1877. The legislature promptly adapted the statute to the change in the constitution.

The result of this and the amendatory legislation was that all equity and divorce causes, and other proceedings, and all causes covered by the constitutional amendment, are tried by a referee or a single judge, and his finding of the facts is final. The Supreme Court, in *Sargent vs. Putnam*, 58 N. H. 182, in a most elaborate opinion, held that "an action at law may be committed, without the consent of the parties, to one or more referees for the settlement of accounts too complicated to be intelligently investigated and adjusted in a jury trial." In this case the trial-judge ordered the cause to be referred to three referees, and that their report when made should be final. The significance of the decision is not in the fact that it denies the right of trial by jury in matters of long accounts. This, for historical reasons ante-dating her constitution, was so in New York and

other states. These reasons never existed in New Hampshire. The decision is, therefore, authority for the proposition that the Constitution gave no party the right to a trial by jury where that would in fact have been impracticable. This decision has been repeatedly affirmed and, as many think, extended. In *Wooster vs. Plymouth*, a highway town case, the court followed the decision in *Dunmore's Appeal*; 52 Pa. St. 374, and held that neither party in a suit against a municipal corporation had a right, under the Constitution, to trial by jury. These decisions narrowed the pre-existing practice in a marked degree. Besides this, by agreement of the parties or counsel, a large share of the causes, where the parties are still entitled to a jury trial, are tried in the same way. These trials, as a rule, are had within ear-shot of the parties and their witnesses. They are speedy. A single judge is much more liberal in the admission of testimony than if the trial were by jury. They are less expensive. Many causes are tried at the entry term, which is practically open for trials, at the convenience of court and counsel, until a short time before the next term. The causes not disposed of at the entry term go upon the continued docket. In the opinion of one of the judges, who has given special attention to the matter, fully two-thirds of the entire calendar has been taken from the jury by the constitutional amendment. In the year 1882-83, there were but seventy-five jury trials in the entire state. In my own, the central county, we have not averaged more than four or five jury trials a year for several years. The amount paid referees in 1879 was \$15,674.40; in 1880, \$16,711.57; in 1881, \$17,491.19; and in 1882, \$11,505.78. The salaries of the judges were increased in 1881; since then they have done a large share of the work formerly done by referees, and the amount paid the latter has necessarily been diminished.

Physical causes, as suggested by Mr. Potter, undoubtedly had their effect both upon the people and the profession. Manufactures have utilized every stream, and railroads have gridironed the state. The people, and lawyers in particular, come and go at tick of wire or touch of bell. This has changed the old-time social character of the profession, as well as its methods. Oratory has passed away. Thorough preparation, and a statement, bristling with points like an auditor's report, has taken its place. What has been true with us may, from like causes, become so throughout the Union.



PAPER

READ BY

SIMEON E. BALDWIN.

Preliminary Examinations in Criminal Proceedings.

There are but three of our states* in which the constitution does not declare that no person accused of crime shall be compelled to give evidence against himself; and a similar guaranty was grafted into the Constitution of the United States, at the instance of the first Congress. I ask you this evening to consider the reason of this rule, and the true limits of its application.

Our fathers, in the era of our early constitution-making, were not acting the part of political theorists. They undertook to deal with practical questions in a practical way. It was their business to gather in the hard-won fruits of Revolution. They had just struck off the hold of a government which had been always hard, and often hostile—a government administered in the interest of the great and the rich; a government which was suspicious, jealous, overpowering, when it wished to overpower.

Men were still living in whose boyhood torture had been applied on British soil, to wring confessions from unwilling lips; and the common law gave no sufficient warrant against its future use, should public safety ever be deemed to demand it, by those in power.

* Georgia, Iowa, and New Jersey. South Carolina did not introduce the provision till 1868, nor Michigan until 1850.

Britton, indeed, had said* that felons must be brought into court without irons; "so that they may not be deprived of reason by pain, nor be constrained to answer by force, but of their own free will;" but Bracton puts this privilege as granted, so that they might not appear compelled to offer to undergo the trial by ordeal.†

Coke gravely tells us in his *Institutes*‡ that "there is no one opinion in our books or judicial records (that we have seen and remember) for the maintenance of torture or torments," and that Magna Charta forbids it; yet a few years before (1619) he had signed, as privy councilor, a warrant to put one charged with treason to the rack;§ and in his speech as attorney general (in 1600) in the prosecution of the earls of Essex and Southampton, he attributes to the queen "overmuch clemency to some" in the inquiry into the matter in hand, since, "out of her princely mercy, no man was racked, tortured, or pressed to speak anything farther than of their own accord and willing minds, for discharge of their consciences they uttered."|| So in 1613, in the Countess of Shrewsbury's case, Coke,¶ as chief justice, mentioned it as a special privilege of the peerage in legal proceedings that, "for the honor and reverence which the law gives to nobility, their bodies are not subject to torture *in causa criminis laesae majestatis*."

It took, in truth, Cromwell and the Civil War to root out torture from the English courts; nor was it given up in Scotland until the succeeding century.

The criminal code of England was a bloody and heartless one, when the Pilgrims sailed away for freer shores. Its

* Cap. v. 36.

† Bracton, lib. iii. 137, "Ne videat coact' ad aliquam purgationem suscipiendam."

‡ III. 35.

§ Samuel Peacock. Ann. Reg. for 1790; Antiq. 96.

¶ 1 State Trials, 1336.

¶ 12 Rep. 96.

severity, it is true, often prevented its execution. Juries stood ready to violate their oaths rather than send a man to the gallows for some trivial offense; and to construe the strength out of many a Draconian statute was often, in the language of the paper to which we listened with so much pleasure this morning, "the resplendent work of a humane judiciary."

But wherever the interests of the party in power were involved in a criminal proceeding, the bench had proved but a feeble barrier against political passions and prejudices. Under the guise of prosecuting crime, ministers had not seldom been seen to strike down the innocent and spare the guilty.

What might be the future of the new governments which, a hundred years ago, were being here called into life, to succeed to the rights forfeited by the British Crown, who could tell? They were to be clad with the same sovereign power. They might abuse it in the same way.

For this cause we find these solemn guaranties in our American constitutions, of the right of all accused of crime to have fair notice of the charge, defense by counsel, trial by jury, and exemption from being forced to testify against themselves.

That of defense by counsel is more nearly connected than one might think with that of immunity from enforced confession.

In Finch's *Discourse on Law*, he speaks approvingly of the then English rule of refusing counsel when the prisoner denied the fact, and gives this as his reason:

"For either his conscience, perhaps, will sting him to utter the truth, or otherwise, by his gesture, countenance, or simplicity of speech, it may be discovered; which the artificial speech of his Counsel learned, would hide and colour. Also himself can best answer to the fact."*

* Edition of 1661, p. 386.

The power of a law, I need not say to an audience like this, cannot be known or foretold when it is enacted. It will lie in the construction and operation to be given it by the courts and people.

If it appeals to some popular prejudice; if it is rooted in some traditional principle of freedom, for which a former generation may have fought with their kings, and fought successfully; if it attracts human sympathy, or reassures human fears, it may rear up around itself a wall of protection and public reverence, which will endure long after the reason of the enactment has ceased to exist. A law may grow into an institution. It may be extended by analogy, it may be expounded and expanded by some course of judicial decision, far beyond the anticipations of its framers.

So did the little phrase, "impair the obligation of contracts"—like the genius of some Arabian tale—at the touch of the magic wand of Chief Justice Marshall, rise and spread into the form of that invincible champion of chartered franchises, by which the whole theory of American corporations was to be revolutionized once and again.

And so, by means perhaps less direct, but no less controlling, has a new meaning been read into many a provision of statute or constitution, by public opinion and the lapse of time—a meaning by which the law, it may be, at last ceases to protect, and begins to oppress society.

Has not this been the history of the constitutional guaranty now under consideration?

The judges of England gave it as their opinion, in 1628, under the spur of the public sentiment that was then dictating the Petition of Right, that to compel a discovery by torture, from one accused of crime, was not allowable by the laws of the realm. All precedent, however, was against them. The practice of the reigning sovereign continued to be against them as long as he had courts to control. The

authorities which they could cite to sustain their opinion were uncertain. Britton, in the passage already quoted, was the strongest of all. Fortescue* had inveighed, with a manly outburst of feeling, against the barbarity and folly of the practice, but had not ventured to deny its legality. Jardine, in our own day, has not hesitated to defend it as an ancient flower of the prerogative.

The maxim, *Nemo tenetur accusare seipsum*, first appears in English law books† at the era of the Civil War, and certainly derives no authority from the language in which it is expressed. As Ortolan said of the theories of Roman law and legend evolved by the German historical school, it has the singular merit of having been wholly unknown to the Romans themselves.

Hardly two authors quote it in the same words, and in one leading case, *People vs. McMahon*, 15 N. Y. 387, 390, it is cited twice in the same opinion—once as *Nemo tenetur accusare seipsum*, and once as *Nemo tenetur prodere seipsum*.

Here, then, was a disputable doctrine of uncertain origin—a doctrine that great men could assert in books, and deny in practice. It was a doctrine in advance of the utterance of the judges in *Felton's case*. They only forbade torture. This went further, and forbade any form of compulsion.

In the *Countess of Shrewsbury's case*, already cited, while her rank and sex might save her from the rack, Coke and Bacon concurred in holding that a fine of £20,000 and imprisonment during the king's pleasure were but a just punishment for her refusal to criminate herself; and the poor lady, in fact, died in the Tower.

Our forefathers, then, approving to its full extent the principle formulated in Wingate's maxim, determined to give it a place in their constitutions. They did so. But did they mean to do more, and in effect impede, if not prevent, dis-

* Cap. xxii, folio 24.

† Wingate's *Maxims*, 1648.

closures of crime, not procured by force or threatened fine or imprisonment? For this is the result to which a hundred years of use has really brought us.

In few of our states* is the prisoner, on his arrest, even asked by the examining or committing magistrate if he desires to make a statement; and in almost every one of these the magistrate is enjoined to caution him that he need say nothing, and that whatever he does say may be used against him. Similar provisions were introduced into the English law by Sir John Jervis's Act† in 1848.

Is it not plain that such an invitation to speak is rather a counsel to keep silent?

The object of criminal prosecutions is to detect the authors of crime, and to punish them. In the majority of cases the person arrested is the person guilty. In most countries the first step is to ask him to give an account of himself with reference to the crime in question—to say where he was and what he was doing at the time of its commission; to explain, if he can, the circumstances which fasten suspicion upon him. In most countries this inquiry is conducted by a magistrate or prosecuting officer, and instituted before the prisoner has consulted counsel, or had time to frame theories of defense. The result of the examination is put in writing by the same authority, and therefore preserved in an authentic form. If the accused be innocent, he will often be able to clear himself by a frank statement; if guilty, he will probably become involved in contradictions and absurdities.

Such was the practice in England until the act of 1848. Her justices of the peace were originally more like our

* Some sort of provision to this effect is made in Delaware, Louisiana, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Tennessee, and Texas, and in these states only.

† 11 and 12 Vict. cap. xlii.

constables,—prosecuting, rather than judicial officers. From ancient times, and under the positive injunctions of an act of 1554,* they had made it a principal part of their duty to examine the prisoner, and record whatever information he gave.†

In the Countess of Shrewsbury's case, we find Lord Bacon pressing her to a disclosure, by this very consideration of ancient and reasonable practice.

"No subject," he says, in his stately fashion,‡ "was ever brought in causes of estate to trial judicial, but first he passed examination; for examination is the entrance of justice in criminal causes: it is one of the eyes of the king's politic body: there are but two—information and examination: it may not be endured that one of the lights be put out by your example."

No prisoner, indeed, can hope to be exempted from an examination, simply because the law makes no provision for requiring it. Some such questioning, under any system of jurisprudence, he is certain to undergo. It may come from neighbors, from busybodies, from reporters, from constables, detectives, jailers. It will come from them if it does not come from authority of law. And the answers obtained, lying simply in human memory, will be easily twisted and perverted by the narrator, anxious, perhaps, to magnify the importance of the revelation his sagacity has secured, or perhaps to screen a friend or serve a grudge.

It is, in fact, the evils and inaccuracies of testimony, founded on these extra-judicial confessions, which have led English and American courts to confine its introduction within such narrow bounds.

* 2 and 3 P. & M. c. x.

† 1 Stevens' *Hist. Crim. Law of England*, 219, 221.

‡ 2 State Trials, 770, 778.

But for the very reason that those in authority have no right to require a disclosure, those without authority feel justified in seeking to worm it out by threats, by fraud, by holding out false hopes, by putting forward false pretenses. On information thus obtained rests a large part of the convictions for crime in any of our courts. The source of the information may not appear at the trial. Unguarded answers may have put the inquirer on the track of more certain evidences of guilt, and an explicit confession, however obtained, if once made, is likely to result in a plea of guilty.

In many cases, then—in most, I believe—the conviction of the prisoner, in this country as well as under the continental mode of procedure, results from words spoken by himself. But what European courts accomplish by direct means, we attain by indirection.

Unwilling to allow a magistrate to institute, as a matter of course, a formal examination, and place the result on record, we leave the same information to be fished for by the sheriff who makes the arrest, by the jailer, by a fellow-prisoner turned informer, or by the detective in disguise, and only require the witness who proves it to add perhaps perjury to fraud, in swearing that no undue means were used to elicit the confession.

The tendency of modern legislation has, we all know, been strongly in favor of admitting parties in interest as competent witnesses.

The common law excluded them because it believed that they were likely to lie, and certain to be tempted to lie.

But, for a generation past, England, and, for the most part, America, have received their testimony in civil actions for what it is worth, and have found the cause of justice advanced by it.

In criminal proceedings, the temptation to perjury, if the accused is allowed to testify for himself, is undoubtedly

greater—rising with the degree of the crime charged; and yet he is to-day a competent witness in most of our states, and has been since 1878 in all courts of the United States.

It is a general feature of these recent laws—admitting the accused to the witness-stand—that his failure to testify shall not create any presumption against him. I cannot but think that this proviso is only another proof that the spirit of the constitutional guaranty in his favor has been misconceived in its administration.

Were it not for that guaranty, who would say that if a man has the right to speak in his own behalf, to explain all the circumstances brought up against him, and declines to avail himself of it, it ought not to be deemed an indication that he cannot explain them? In the forum of common sense it is such an indication. If our boy, our servant, our clerk, is charged with some fault, and denies it, we expect him to make a frank statement of what he did or knew. If he does not, we consider the charge half proved. Should we be more tender of the prisoner in the dock? Give him, if you please, the right to testify for himself; but, if you give it, do not disturb the balance of justice by forbidding the jury to suspect him, if he keeps silent.

Such has been the view of some,* but not of most courts, in administering justice in such cases, under statutes not containing a positive prohibition against comment on the position of the accused if he declines to testify. The general current of decision has been towards making his constitutional privilege as wide as the words will bear.

This course of construction has led to many rulings in favor of the defense, which I cannot but think strained and unnecessary.

Thus, in a recent case in this state,† it was held that the

* *State vs. Bartlett*, 55 Maine, 215-221.

† *People vs. McCoy*, 45 How. Pr. 216.

person of a woman charged with killing her infant child, could not, without her own consent, be examined by physicians deputed by the coroner, to ascertain if she had recently been a mother. The same principle would seem to preclude searching the pockets of a suspected thief, or stripping a man arrested for murder, to see if his body shows marks of blood or violence.

In a later case in Georgia,* indeed, the court rejected evidence that the defendant's foot fitted exactly the tracks left on the ground by the perpetrator of a crime, because, to obtain the proof, his foot was placed by force in the necessary position.

A different, and as it seems to me, sounder conclusion has been reached in some other of our states, in admitting testimony of a similar character.†

The leading authorities, however, are in accord in holding that the prisoner who accepts the benefits of a statute making him a competent witness, accepts them to the extent of becoming open to the same cross-examination to which any other witness may be subject, and in respect to whatever can legitimately throw light on the question of his guilt, whether or not it be connected immediately with his direct testimony. When he voluntarily puts himself under oath, the logic of the law leads inevitably to this result; although where the statute simply allows him to make a statement, there are judges of eminence who have reached a different conclusion.

In fact, there are few parts of criminal jurisprudence in which American judges in expounding the law, and American legislators in framing the law, do not lean on the side of the defense.

* *Day vs. State*, 63 Ga. 667.

† *State vs. Graham*, 74 N. C. 646; *State vs. Ah Chuey*, 14 Nev. 79; *Walker vs. State*, 7 Tex. App. 245. A more extended and thorough discussion of the authorities will be found in the *Central Law Journal* of last year, vol. xv, pp. 2, 207.

Much is said with us as to the rights of criminals; so much, that we almost forget that the state has rights against criminals and against those charged with crime, on the maintenance of which the public life depends, and that it is mainly for their maintenance that the state exists,

“And sovereign Law—that state’s collected will—
O’er thrones and globes elate,
Sits empress, crowning good, repressing ill.”

A sharp lecture was read last winter to the American public by a well-known sociologist, on “The Forgotten Man.” He was the hard-working, law-abiding, unobtrusive man, whom legislators forgot, in their zeal to help the poor, reform the vicious, and grant relief to every interest that clamors and pushes for it.

The noblest feature of modern society is its attainments, not in science and art, but in humanity. We recognize the dignity and worth of man, as man, and recognize it even in the meanest and basest. There is but one temple on earth, says Novalis, and that is the body of man.

But there is a point at which humanity turns into sentimentalism. There is a point where selfishness—that is, putting forward self-protection as the first object—becomes a government.

The American system of criminal prosecutions is one which seldom convicts the innocent; but it is also one which often acquits the guilty. The proportion of acquittals to jury trials is probably three times as great as in England, and ten times as great as in Scotland or on the Continent. There are few civilized governments in which homicide is as frequent as in some of our western and southwestern states and territories; there are none in which convictions for murder are so rare.

The defendant has, under all systems of criminal justice, a great advantage in the matter of pleading. The prosecutor

must formulate his charges with precision and accuracy; but the plea of Not guilty leaves him utterly ignorant of the defense by which he is to be met. It may be an *alibi*, a justification, a claim of temporary insanity. Whatever it be, he learns it for the first time when the trial is begun, and must be ready to meet and disprove it on the instant, with no possibility of a postponement on the ground of surprise.

This embarrassment to the prosecution seems to be an inevitable one. Not so as to the embarrassments set up by our administration of the rules of evidence; for it is these rules which have grown into an artificial net-work, through whose meshes a well-defended criminal can so often slip.

I find no fault, again, with the fundamental principle that the state must satisfy the jury of the prisoner's guilt beyond a reasonable doubt. It speaks well for society when it can afford to say to a citizen who is pursued for a claim, however great, involving no moral wrong or civic degradation, You must pay it, if there is a bare preponderance of evidence against you; and yet say to the same man, if charged with crime, We will declare you innocent, unless we show that there is no hypothesis to be framed which is not inconsistent with your innocence. Only a free state can or will take this attitude. Perhaps no state which does not take it can be free.

But here is it not time to stop?

We have relieved the prisoner from the necessity, ordinarily imposed in civil cases, of pleading the nature of his defense. We have thrown upon the public a burden of proof heavier than it is thought just to impose on any private suitor. Why, at the same time, cut off the counter right which every private suitor has, of putting his adversary to his oath as to the merits of his defense? The historical reason we have already considered. If government can ask a prisoner to testify, they can require it; if they can require it, they can force a compliance. All such force our constitutions forbid; and

far be it from any advocate of law reform, to urge a recurrence to it; whether it be the Bavarian plan, now or lately in force, of giving only bread and water to an accused who refuses to make a statement, or the more downright English methods of rack and thumb-screw, fine and imprisonment, discarded two centuries ago.

But between forbidding physical or moral compulsion, and inviting, or even urging a frank disclosure, the difference is wide. We have construed a prohibition to compel as a prohibition to request.

We assume a burden of proof unknown except where the English tongue is spoken; we demand an unanimity in the verdict equally unknown elsewhere; we often permit the jury—a thing unheard of in any other land—to go to their homes and mingle with the friends of the prisoner, while they are deliberating upon his guilt,—and yet we reject the aid of the simple expedient which would occur first of all to any child, of asking the accused what he has to say about the charge against him.

They are still jealous of their government in Great Britain. It is still a royal government, supported by an idle aristocracy; two of the estates of the realm ruling by no other right than that of birth. In prosecutions for political offenses, the interests of these two estates are directly involved, and to one of them the bench itself, in its highest places, belongs.

It is not strange, therefore, that, while not surrendering the procedure of preliminary examinations, close upon the arrest, they have been sedulous to require the magistrate to warn the prisoner that he need not answer, and that, if he does, his words may be used against him.

But with us, government has no other office or end than to order and protect the peace of society. The prisoner is tried before judges, and by prosecuting officers, who were,

directly or indirectly, of his own choosing. The jury is made up of his neighbors; the law is one, directly or indirectly, again, of his own making. He has been, probably, educated at the expense of the state, for the very purpose of giving him the intelligence necessary to govern his conduct as becomes a good citizen. No private prosecutor, as in most countries, is pushing the case against him, for revenge or restitution. He has to contend only with the public, and the public have no interest except to discover the truth, whichever way it lies.

If, then, we would make the punishment of crime as certain here as it is in Europe—I might almost say, as it is in Mexico or China—let us abandon our attempt to fight it without the use of the ordinary weapons that lie at hand; without asking the man who, of all the world, knows best what the facts are, to tell us about them; and without asking him in such a way as to facilitate, rather than to prevent, an honest statement. Let him be brought before the examining magistrate, as he is abroad, before he has time to fabricate an explanation, before he has seen counsel, when the proofs of guilt are fresh. Let him be confronted with these proofs, and asked how he can meet them. If he refuse to say anything, let it be so recorded. If he does speak, let all be written down in his presence, read to him, and signed by him, if he will. And let all be done, not as a matter of favor from him, but of right to the state. Let there be no caution that he need not answer, and no warning that he may be making evidence against himself.

Do you say that an innocent man, under such an examination, may become confused, and answer confusedly or incorrectly? He will certainly be less liable to do so than if questioned unofficially by a wheedling detective or incredulous policeman, and such questioning is as sure to come as it is to be but half remembered.

A fair report, made at the time, in writing, by an impartial magistrate, proves often the best evidence for the accused, and results in his immediate discharge.

To advocate examination of the accused before the committing magistrate is, of course, a very different thing from advocating his examination by the court on his trial to the jury. Both of these examinations form a part of the general continental system, but it is that from the bench which becomes often and justly a matter of reproach.

In France, for instance, the preliminary examination is conducted by the prosecuting officer, in order to determine whether there is or is not ground to prosecute; but when the accused is once informed against and put on trial, the judge is apt to presume his guilt, and exercise all his ingenuity to twist some admission out of him, or perhaps to distort what is said, so that the jury may receive a false impression from it.

The embarrassment of the defendant when actually on trial, and confronting a charge of crime laid against him by the authority of the state, is naturally and necessarily greater than when, at an earlier stage of the proceedings, the state is simply inquiring whether it ought to be put to the expense of a prosecution. The very nearness of the final decision, by a verdict which may convict and may set free, must intensify the excitement of his feelings.

If the prosecutor is allowed to question him now, the interrogation is sure to be unfriendly; it may be, it is even likely to be, if conducted by the judge. Under such circumstances the contest between the questioner and the questioned is too unequal, and innocence may well seem guilt.

A learned member of this Association, in his elementary work on *Constitutional Law*,* has not hesitated to say that the rule "that no person shall be compelled to be a witness

* Pomeroy's *Const. Law*, p. 155.

against himself, can only be supported by that intense reverence for the past which is so difficult to be overcome," and that "there can be no doubt that the states will gradually abandon this provision, and reject it from their constitutions."

I doubt if the prediction comes true; I doubt if it would be well that it should. There may yet come a revolution in social forces, which would make even the use of torture tolerated in courts, were there no fundamental law to forbid. The highest refinement in civilization has, in former ages, not been found incompatible with the highest refinement in cruelty; and the nature of man changes little, beneath the surface, from generation to generation. Lynch-law, within our own borders and among our own people, has been no stranger to the arts of interrogation, aided even by torture, at the foot of the gallows.

Let us keep our constitutional guaranties as they are, but let us read them and apply them like reasonable men. It is enough to reject the use of force, without also refusing even to ask the defendant to speak for himself. It is enough passively to submit to his refusal to answer, without also forbidding judge and jury to draw from it the natural conclusion.

We heard this morning the playful humor with which a distinguished jurist of long service, both at the bar and on the bench, professed his pleasure at listening here so often to young men eager to proclaim the new light which they saw breaking upon the mountain-tops of jurisprudence, and which had not yet been revealed to the dimmer vision of their elder brethren. I can no longer claim the privilege of youth, but let me not be accused of bringing before you any novel speculations, any fancied discoveries of my own. I stand here the advocate of no new, no untried method of procedure. It is our present method which is the innova-

tion on the practice of all lands and all times. It is against experience, against nature; I believe, against reason.

It is no mean distinction to New Jersey that it is the only American state that has steadfastly adhered to the ancient plan. It shows the same spirit of independent judgment and sound conservatism which, under the lead of Patterson, made her influence so great and so healthful in the Constitutional Convention of 1787. And more, perhaps, than anything else in her system of criminal administration, it has made "Jersey justice" proverbial along the Atlantic coast, to signify swift and certain retribution to wrong-doers, at the hands of the law.

America has tried many experiments in the art of government. She has tried none more hazardous than that which has been the subject of our consideration to-night. Is it not true that there are parts of the United States where more criminals are yearly put to death by lynch-law, or by the hand of some private avenger of blood, than by judicial warrant? And is it not true that, in those communities, public sentiment justifies such deeds of violence, because the courts afford too uncertain a remedy; not because they are corrupt, but because they are inefficient?

If we would make American justice as sure as American liberty; if we would banish pleas of temporary insanity from our court-rooms, and mob-violence from our frontiers, let us begin by going back—back to the ancient ways from which a false humanitarianism has led us off. Leaving our constitutions as they are, let us interpret them in their true spirit, and give the state, in its judicial contests with those whom it charges with crime, once more an equal chance.

PAPER

READ BY

SEYMOUR D. THOMPSON.

Abuses of the Writ of Habeas Corpus.

The writ of *habeas corpus* has been justly styled the "Writ of Liberty."^{*} At times it has been used in such a way as to deserve the censure of being called the Writ of Anarchy. The primary object of the English Habeas Corpus Act was to afford a speedy and summary means of relief to those who should be unlawfully imprisoned by the agents of the Crown. A most odious and oppressive form of this imprisonment was that which took place under commitments issued by the secretaries of state, directing the arrest and detention of persons on suspicion of treason,[†] and upon other charges.[‡] The instruments or agents of the secretaries, by whom these arrests were effected, were called *messengers*. There were some forty of them.[§] Persons arrested and detained by them were not confined in any of the public prisons of England established or recognized by act of Parliament, to which the commissions of Oyer and Terminer and Jail

* Callahan *vs.* State, 60 Ala. 65.

† Roe's Case, 5 Mod. 78; S. C. 1 Salk. 346; Hellyard's Case, 2 Leon. 175.

‡ See Yaxley's Case, Carth. 291; Memorial of the Judges, And. 297.

§ In the case of Roe *et al.*, it was said by Sir Bartholomew Shower, in making his argument for the prisoners, that there were forty-two of them. (5 Mod. 78, 82.) This was in the seventh year of William III.

Delivery extended, but were confined in the private houses of these messengers. Scattered throughout London, or perhaps throughout England, there were, therefore, some forty private prisons—unknown to the laws, and unvisited by the courts of justice—in which, but for this salutary writ, the king's subjects might languish for an indefinite period of time without being brought to trial. Designed as a means of subjecting to the superintendence of the superior courts and judges, arrests and imprisonments made by ministerial officers and by inferior magistrates, it was never intended that it should interrupt the regular course of justice in the superior courts, or that it should subject the executive department of the government to the superintendence of the judiciary. How far it has been kept within its proper limits in England, it is not my purpose to inquire; but I shall point out that judicial sentiment in America has been so far influenced by the extravagant views of the right of personal liberty with which the American Republic commenced its career, that this writ has been used by the federal courts as the means of subjecting one of the most important functions of the executive branch of the government to the control of the judiciary; that the state courts have, by the same means, attempted to subject the executive department of their own states to judicial control; that the modesty of these tribunals has not withheld them from attempting at times the same control over the executive department of the general government; but that they have attempted by this means to revise its action in executing its treaties with foreign countries, and have even asserted a use of this writ, such as, if carried out by them on the one hand, and yielded to by the officers of the general government on the other, would enable them to arrest the march of the national armies in time of actual war. Nor have the courts of these two jurisdictions, the federal and the state, always stayed

their hands in the use of this writ from the molestation of each other. They have attacked each other's processes and opened each other's prisons. Such a conflict, from the beginning, must have been unequal, and its result must have been foreseen. Questions which were labored by these respective tribunals in ponderous opinions were finally settled amid the thunder of cannon; and under that settlement, as I shall hereafter show, the police regulations of the states, their criminal codes; the decisions of their highest judicatories, and even their constitutions, lie at the feet of the inferior federal judges.

When we consider that the doubtful policy of the founders of the government and of their successors, until a period comparatively recent, committed the execution of the federal laws in part to the judicatories of the states; made the justices of the peace of the states the examining magistrates in criminal cases for the federal tribunals; made the judges of the states federal magistrates for the purpose of executing extradition treaties with foreign countries, for the purpose of naturalizing aliens, and in some cases for the purpose of executing the criminal statutes of the United States; and made the jails and prisons of the states the jails and prisons of the federal government,—it is not a matter of surprise that the judges of the state courts, at an early day, exercising a supposed jurisdiction by means of the writ of *habeas corpus*, should have assumed to say whether a fugitive from the justice of a foreign country should be surrendered;* whether fugitives escaping from slavery in other states should be delivered up pursuant to the Constitution and laws of the Union;† whether persons enlisted in the armies of the United States should be held to military service, or dis-

* *Re Washburn*, 4 Johns. Ch. 106; S. C. Wheel. Cr. Cas. 473; Com. vs. Deacon, 10 Serg. & R. 125.

† *Matter of Booth*, 3 Wis. 1; *Ex parte Robinson*, 1 Bond, 39.

charged therefrom, even in time of war;* and whether a person in the military service of a foreign country should be tried as for a crime in a state tribunal for an act done as a belligerent under the command of his sovereign and in conformity with the laws of nations.† These pretenses, born of an extravagant view of state's rights and state sovereignty, presented a paradox which excites the liveliest curiosity in us, who look back upon them as matters of history; for if a state is a sovereign, and if the United States is another sovereign, these decisions present the spectacle of the courts of one sovereign controlling the officers and agents of another sovereign; interposing in its foreign relations, and even disbanding its armies. If great inconveniences did not arise from the assumption of such a jurisdiction, it was due to the wisdom, the patriotism, and the moderation of the judges who assumed to exercise it. The very existence of such a power, distributed so widely and through so many scattered and irresponsible agencies, should have been a source of serious apprehension. An admonition of what *might* have been done in the exercise of it, should have been found in what actually *was* done. The Supreme Court of New York held and tried a British subject for murder, predicated upon an act done upon the soil of that state as a belligerent during the Canadian Rebellion of 1837, after his immediate release had been demanded of our government by that of Great Britain;‡ and an eminent jurist, holding the office of chief justice of the same state, issued an attachment, for an evasive return to a writ of *habeas corpus*, against a general of

* *Com. vs. Harrison*, 11 Mass. 63; *Com. vs. Cushing*, *id.* 67; *Com. vs. Downes*, 24 Pick. 227; *McConologue's Case*, 107 Mass. 154; *U. S. vs. Wyngall*, 5 Hill, 16; *Carlton's Case*, 7 Cow. 471; *State vs. Dimick*, 12 N. H. 194.

† *People vs. McLeod*, 1 Hill, 377. This could hardly be called an *abuse* of the writ, the court having refused to discharge the prisoner.

‡ *People vs. McLeod*, *supra*.

division commanding the armies of the United States in the field, upon the theatre of actual war.* If the judicial courts of a state could embroil the United States in a foreign war, and then, the war being flagrant, and the country actually invaded, could disband its armies and imprison its generals by means of the writ of *habeas corpus*, what sort of a government would the United States have been? It certainly would not have been a Nation, spelled with a big N. It was not until the year 1858 that it became settled by an authoritative decision of the Supreme Court of the United States that it was beyond the power of the state courts, by the writ of *habeas corpus*, to discharge federal prisoners from custody, and to interfere with the process of the federal courts, or with the agencies of the federal government.† Even then many of the state courts refused to be taught. Notwithstanding the principles thus declared by the Supreme Court of the United States, they limited its authority to the precise case in judgment. They held that it did not extend beyond the case of a prisoner held under *process* emanating from the federal courts; and accordingly they continued to discharge enlisted soldiers and sailors of the United States from the custody of their officers, even during the late war, until the suspension of the privilege of the writ by the President, under the act of Congress of 1863.‡ With the removal of this suspension they revived the practice;§ and it was not until the year 1871 that the Supreme Court of the United States,|| on a writ of error to the same court whose judgment had been reversed by it thirteen years before, renewed the lesson taught the courts of the states that their jurisdiction did not extend to

* Matter of Stacy, 10 Johns. 328.

† Ableman *vs.* Booth, 21 How. U. S. 506 (reversing *Re* Booth, 3 Wis. 1).

‡ *Ex parte* Anderson, 16 Iowa, 595.

§ *Ex parte* McCarey, 2 Am. Law Rev. 347.

|| In Tarble's Case, 13 Wall. 397 (reversing *Re* Tarble, 25 Wis. 290).

interfering with the agencies of the federal government, and swept into the limbo of vanities nearly a hundred reported decisions of the state courts in which such a jurisdiction had been asserted and exercised. It may be assumed that these two decisions have finally unfettered, first the judicial, and next the executive, power of the general government from state interference through the agency of this writ.

But the pernicious doctrines already engendered continued in some measure to illustrate the historical fact that courts are greedy of jurisdiction, just as kings are greedy of territory, and apparently in obedience to the same law of human nature. The Constitution reposed in the President of the United States the execution of treaties with foreign countries. In 1842 a treaty was entered into between the United States and Great Britain, which provided for the mutual surrender of fugitives from justice in certain cases.* To give effect to this treaty, and such other like treaties as it was supposed might be from time to time entered into between this and other countries, Congress passed a law in 1848, establishing the mode of procedure in such cases. The distinctive features of this act were that certain judicial officers, federal and state, therein named, the highest in dignity being the Chief Justice of the United States, and the lowest a commissioner specially appointed by a court of the United States to take proceedings under extradition treaties, should, upon "a complaint made upon oath or affirmation," issue a warrant for the arrest of the alleged fugitive, examine the evidence upon which his extradition was demanded, and certify the same, together with the conclusion thereon of such magistrate, to the Secretary of State for his final action. The law made no provision for the intervention of a *third* magistrate by means of the writ of *habeas corpus*. Certainly it is not to be inferred from this that it intended to exclude the

* 8 U. S. Stat. at Large, 576.

proper use of this writ in such cases. But, having committed the examination of the charge against the alleged fugitive to certain designated magistrates, all of whom are presumed to be learned in the law and competent for the exercise of such functions; having required such magistrates to certify the evidence thus taken to the executive department of the government, to which the final decision, whether or not the prisoner should be surrendered, was committed; and having provided no mode for the review or supervision by any other judicial officer of the proceedings or the evidence before such magistrate, the intervention of a third court by the writ of *habeas corpus*, except for the mere purpose of making inquiries into the jurisdiction of the magistrate thus acting, was unwarranted by any principle known to the law. A commissioner of the Circuit Court of the United States, specially appointed to take proceedings in extradition cases, was required by law to certify the evidence taken by him to the Secretary of State. The Circuit Court of the United States, by its writ of *certiorari*, demanded that this evidence be certified to it. The statute required that the prisoner should be held by the marshal, under the commissioner's warrant, to await the final orders of the executive department of the government; but the Circuit Court, by its writ of *habeas corpus*, commanded that the prisoner should be surrendered to it. Having thus gained possession of the prisoner and the evidence upon which his extradition was demanded, those courts, taking upon themselves the functions of the department of the government to whom the decision of this delicate question had been committed, proceeded to examine the evidence minutely, and to decide whether it was sufficient in law to warrant the extradition of the prisoner. They did more. They instituted minute inquiries with the view of determining whether all preliminary steps required by the particular

extradition treaty and by the act of Congress had been taken. They went even beyond this. They invented rules of procedure which were not found in the particular treaty or in the act of Congress, and held a compliance with these rules to be jurisdictional. They held it necessary that a judicial *warrant* should have issued for the arrest of the alleged fugitive in the demanding country, although neither the treaty nor the act of Congress contained such a requirement.* They made up and tried an issue of fact, whether such a warrant of arrest had been issued, and made the detention or the discharge of the prisoner to depend upon the decision of this issue.† They laid down rules as to the particularity with which the crime charged must be described in such a warrant.‡ They made the jurisdiction of the magistrate to issue his warrant for the arrest of the alleged fugitive to depend upon a requisition *previously* made by the government of the country, from whose justice the fugitive had fled, upon the United States;§ ignoring the fact that neither the statute nor the treaty required this;|| that

* *Ex parte Van Hoven* (second case), 4 Dill. 415, 423, before Dillon and Nelson, JJ. *Contra, Re Farez* (second case), 7 Blatchf. 345.

† *Ibid.*

‡ *Re Farez*, 7 Blatchf. 34, 50.

§ *Ex parte Kaine*, 3 Blatchf. 1; *Re Henrich*, 5 Blatchf. 414, 425; *Re Farez*, 7 Blatchf. 34, 45.

|| Our treaty of 1874 with Belgium furnishes an exception to this statement. Its sixth article evidently contemplates a requisition by the demanding government, and the issue of a warrant of arrest by the executive government of the demanded government, as preliminary to the arrest and judicial examination of the alleged fugitive. (18 U. S. Stats. at Large, 807; *Ex parte Van Hoven*, 4 Dill. 411.) Neither the treaty with Great Britain (8 U. S. Stats. at Large, 576), that with Prussia (9 *id.* 965), nor that with Switzerland (11 *id.* 593) contains such a provision; and there is nothing in the treaty with Belgium which necessarily implies that magistrates shall not have authority, upon a proper showing, to commit and detain alleged fugitives a reasonable time to await a requisition. In the case of Dugall (2 Lowell, 367), which arose under

the delays incident to the making of a formal requisition might, in many cases, enable the fugitive to escape; that such a formal demand for his surrender might as well be made after his capture as before; and that the contrary practice, in cases of inter-state extradition, had long been sanctioned by the state courts.* They went beyond this. Notwithstanding the fact that the statute made the jurisdiction of the magistrate to issue his warrant of arrest to depend upon "a complaint made under oath or affirmation," they held that a *mandate*, emanating from the executive department of the government, was necessary to give him jurisdiction, although no such process is mentioned in any law or treaty upon the subject.† Having thus established a process unknown to the law, though it may not have been unknown to the state department, and made this

the treaty with Great Britain, Mr. District Judge Lowell took the correct view of this question when he said, "The judge has nothing to do with the question whether the foreign country has duly authorized an application for the extradition to be made. The law is that, when complaint is made on oath, the judge is to examine the evidence of criminality; and, if he deems it sufficient to sustain the charge, shall certify the same to the secretary of state, that a warrant may issue upon the requisition of the proper authorities of the foreign governments. The requisition is to be made to the executive department, and, in the natural order of things, would be made *after* the evidence is taken and certified. If the authorities of the foreign government should find, on the examination of the evidence, that it does not make out a case which they choose to press, they will make no requisition. And the statute gives them two months in which to complete their action upon the matter."

* *State vs. Buzine*, 4 Harr. (Del.) 572, 575; *State vs. Loper*, Ga. Dec. part ii. 33; *Ex parte Lorraine*, 16 Nev. 63; *Hurd Hab. Corp.* 2d ed. p. 614 *et seq.*, and cases cited. Early jurists assumed that the same practice was proper in cases of foreign extradition. *Matter of Washburn*, 4 Johns. Ch. 106; S. C. 3 Wheel. Cr. Cas. 473; *Com. vs. Deacon*, 10 Serg. & R. 125.

† *Ex parte Kaine*, 3 Blatchf. 1; *Re Henrich*, 5 Blatchf. 414; *Re Farez*, 7 Blatchf. 34; *Re Farez* (second case), 7 Blatchf. 345.

process necessary to the jurisdiction of the magistrate to cause the alleged fugitive to be arrested and brought before him for examination, and consequently necessary to the power of the United States to execute the treaty, they proceeded to determine by what officer it should be issued,* and also with what degree of particularity the crime charged should be set forth therein.† Having thus established several prerequisites to the jurisdiction of the magistrate not found in the statute or in any treaty, they next proceeded, with minute detail, to decide how the jurisdiction should be exercised; how the proceeding before the magistrate should be conducted; whether the accused had a right to cross-examine the complaining official;‡ whether the prisoner should be allowed to testify in his own behalf;§ whether the magistrate might adjourn the proceedings from day to day and from time to time;|| under what circumstances he might refuse an adjournment at the request of the prisoner;¶ whether he might discontinue the proceeding, and afterwards cause the arrest of the prisoner on a new warrant for a crime of the same nature;** what record he should keep of the proceedings and evidence;†† how the evidence, if in a foreign language, should be translated, and

* *Re Farez*, 7 Blatchf. 34, 46; *Ex parte Van Hoven*, 4 Dill. 411, 413; *Ex parte Van Hoven* (second case), *id.* 415, 423.

† *Re Macdonnell*, 11 Blatchf. 79, 96. If they are to be censured for inventing a process unknown to the law, and making it a jurisdictional step in the proceeding, they must be credited with liberality in deciding that the process need not be issued *by the President* (*Re Farez*, *supra*; *Ex parte Van Hoven*, *supra*), but that if it were issued by the secretary of state it would do; and that it need not do more than describe the offense charged in general terms (*Re Macdonnell*, *supra*).

‡ *Re Farez*, 7 Blatchf. 345, 349.

§ *Ibid.*

|| *Re Macdonnell*, 11 Blatchf. 79, 100.

¶ *Re Farez*, 7 Blatchf. 345, 359.

** *Re Macdonnell*, 11 Blatchf. 170.

†† *Re Henrich*, 5 Blatchf. 414.

the translation verified;* what evidence was competent and admissible before the magistrate, and how documentary evidence from foreign countries should be attested;† and, finally, what evidence is legally sufficient, in respect of its probative force, to warrant a surrender of the prisoner.‡ One would suppose that the exertions of these courts to aid the President in the execution of treaties with foreign nations would end here. But they have not been satisfied with deciding for him upon what evidence this responsible duty should be performed; they have claimed the right, by their writ of *habeas corpus*, to go behind his warrant of surrender, to arrest the prisoner while *in transitu* under such warrant, and to ascertain whether the warrant has been issued in a proper case and upon an examination before a competent magistrate.§

The courts of some of the states have not been more modest in subjecting to judicial review the action of the chief executive of their states in cases of interstate extradition. The Constitution of the United States imposes upon the states the mutual obligation of surrendering fugitives from justice. The Congress passed an act in 1793 prescribing the mode in which this obligation should be discharged. This statute imposed upon the governors of the states the duty of making the demand on the one hand and the surrender on the other. The governor of the demanded state, while so acting, acts therefore at once under an obligation imposed upon his state as a member of the Federal Union, by the Constitution of the

* *Ibid.*

† *Re Farez*, 7 Blatchf. 345, 352; *Re Henrich*, 5 Blatchf. 414, 423; *Re Stupp*, 12 Blatchf. 501, 521; *Re Fowler*, 18 Blatchf. 430; S. C. 4 Fed. Rep. 303, 317.

‡ *Ex parte Kaine*, 3 Blatchf. 1, 10; *Re Farez*, 7 Blatchf. 345, 358, 359; *Re Macdonnell*, 11 Blatchf. 170, 190.

§ The British Prisoners, 1 Woodb. & M. 66, 69. See *Ex parte Milburn*, 9 Pet. 704; *Ex parte Kaine*, 3 Blatchf. 1.

United States, and also in the character of a magistrate appointed by an act of Congress to execute one of the laws of the Union. The correct principles which govern the use of the writ of *habeas corpus* require that the judicial courts in such cases should limit their inquiries to the question whether the governor who has issued his warrant of surrender has issued it in a case *within his jurisdiction*—that is, in a case contemplated by the Constitution and the act of Congress. There is no sound principle which will authorize them to inquire whether the evidence upon which he has acted in the exercise of this exclusive jurisdiction has been properly authenticated, or is otherwise sufficient. They have, nevertheless, asserted this power in repeated instances,* and have gone so far as to hold that it is competent for them, in the use of this writ, to go behind all the papers in the case, and try by parol evidence the question whether the prisoner was in fact in the demanding state when the crime was committed,—that is to say, whether he was guilty of the crime charged.† That they have no such jurisdiction becomes apparent when we consider the dilemma in which they would find themselves if the governor should decline to certify to them the evidence upon which he acted. Could a court, or a single judge issuing the writ of *habeas corpus*, *ex-officio*, send a writ of *certiorari* to the governor of his state, calling upon him to certify to such court or judge the records of the executive office? Suppose they were to issue such a writ to the governor, and he should see fit not to obey it, could they enforce obedience to it by process of contempt? Could they

* *Re Manchester*, 5 Cal. 237; *Hartman vs. Aveline*, 63 Ind. 344; *Ex parte Sheldon*, 34 Ohio State, 319; *Wilcox vs. Nolze*, 34 Ohio State, 520; *People vs. Brady*, 56 N. Y. 182; *People vs. Pinkerton*, 77 N. Y. 245; *People vs. Donohue*, 84 N. Y. 438. It may perhaps be pleaded in extenuation of the state courts, that a federal judge set the example. *Ex parte Smith*, 3 McLean, 121.

† *Wilcox vs. Nolze*, 34 Ohio State, 520, 524.

imprison the chief magistrate of the state—the chief embodiment and exponent of its sovereignty? The obvious answer to these questions reveals the unseemly spectacle which the courts present when they endeavor to exercise a jurisdiction which is plainly committed to another department of the government, and which in no sense belongs to them.*

It is true that our American governments, state and federal, are governments of checks and balances. Unchecked arbitrary power is contrary to the spirit of our institutions. But power is not properly checked when one department of the government overrides another and usurps its functions. The judicial courts interpose a proper check upon the executive branch of the government, when they declare unlawful the acts of the officers of that department, done in excess of their jurisdiction. In all official action there must be a finality somewhere; and in the surrender of fugitives from justice, the final exercise of discretion may well rest with the executives of the states, where the law has placed it,—magistrates who are responsible to the people for the proper exercise of

*The Court of Appeals of New York, in 1874, asserted the doctrine that it was competent for a justice of the Supreme Court of that state, issuing the writ of *habeas corpus*, *ex officio*, to go behind the governor's warrant of surrender, in such a case, and pass upon the sufficiency of the affidavit upon which the requisition of the governor of the demanding state was based; and the Court of Appeals, being of opinion that the affidavit was insufficient, directed that the prisoner be discharged. (*People vs. Brady*, 56 N. Y. 182.) In subsequent cases, the court reaffirmed this doctrine; but they were obliged to add a modification which made the doctrine amount to something like this: That it is a very good rule for the court or judge, on *habeas corpus*, to apply, when he can get hold of the papers on which the governor acted; but if the governor, in the exercise of his official discretion, declines to submit such papers to judicial examination, there is no power in the court to compel him to do so; nor are they, by reason of his refusal, authorized to discharge the prisoner; but they are bound to presume that he acted upon documents and upon evidence which were sufficient. (*People vs. Pinkerton*, 77 N. Y. 245; *People vs. Donohue*, 84 N. Y. 438.)

their functions, under the obligation of their official oaths, equally with the judges of the court. They ought conclusively to be presumed to be capable of understanding and properly discharging the duties which the law has devolved exclusively upon them. In the discharge of such duties they are aided by the experience of their office, both during their own incumbency and that of their predecessors. They have a competent legal adviser in the person of the attorney general; and the execution of this delicate duty may better be reposed finally in them as remitted to the uncertain discretion of a scattered body of judicial magistrates, exercising the power of revising the executive action.

The judicial courts have not only assumed the power, by means of the writ of *habeas corpus*, to superintend and control the action of the executive department of the government, both state and federal, but they have, by the same process, assumed to pass upon the validity of the government itself. In this way the Chief Justice of the United States, in 1868, decided that persons holding office in the states lately in rebellion, who were disqualified by the ousting ordinance of the Fourteenth Amendment, were nevertheless entitled to hold their offices until the constitutional provision should be enforced by legislation.* The Supreme Court of South Carolina, in 1876, determined, under this writ, that the acting governor of that state was not entitled so to act,† and, in 1873, the then Supreme Court of Texas, in a sham case, gotten up by the fictitious arrest of an old negro, decided that the *de facto* government of Texas was not the government *de jure*, refused to allow the state's attorney to enter a *nol. pros.* in respect of a crime with which the relator was not charged, discharged the relator from an

* *Caesar Griffin's Case*, Chase's Decisions, 364; S. C., *sub nom. Re Griffin*, 25 Tex. Supp. 623.

† *Ex parte Smith*, 8 S. C. 495.

imprisonment to which he had never been subjected, and dismissed the existing government of Texas without costs.* When, at about the same unhappy period of our history, a judge of a district court of the United States, by an injunction issued at midnight, dispersed the legislature of a state and suppressed its government, some of us, who were then young at the bar, concluded that the writ of injunction was a very great writ. In view of the instances which I have cited, the same dignity must certainly be accorded to the writ of *habeas corpus*. But these are not proper uses of this writ. Whether a person, *prima facie* in possession of a public office, is rightfully entitled to exercise the functions of such office, is not properly triable in such a summary and *ex parte* proceeding, to which neither the incumbent of the office nor the state is a party.† The parties who are interested in contesting this question, and who are entitled to contest it, are not before the court. The court itself may not be such a tribunal as, under the Constitution and the laws, has jurisdiction to try the title to such an office; and, so far as it operates upon the rights of the incumbent or of the state, its judgment in such a case, when tested by sound legal principles, is as clearly void for want of jurisdiction as the act of an usurping executive officer can be.

These extraordinary uses of the writ of *habeas corpus* may well amuse the student of history, and call forth judicious criticism, but they no longer excite apprehension. They were, in a large measure, the offspring of troublous times, or of conditions which have passed away. But the steady growth of the power exercised by this means by the federal tribunals, and the extraordinary pretensions which it has in recent years assumed, remain a subject of serious concern.

* *Ex parte Rodriguez*, 39 Tex. 705.

† *Sheehan's Case*, 122 Mass. 445; *Re Wakker*, 3 Barb. 162; *Ex parte Call*, 2 Tex. App. 497; *Re Ah Lee*, 6 Sawy. 410; S. C. 2 Crim. L. Mag. 336.

The founders of our federal judicial system, in conferring upon the national courts the power to issue writs of *habeas corpus*, added this proviso: "That the writ of *habeas corpus* shall in no case extend to prisoners in jail, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."* This proviso had the effect of staying the hands of the federal tribunals in the use of this writ, in all cases where prisoners were held in state custody, except where they were committed for trial before a court of the United States, or were necessary to be brought before such a court to testify.† An *attaché* of a foreign legation, arrested for a crime by a state magistrate, in violation of the privileges of his sovereign and of the law of nations, could not, in consequence of this proviso, be discharged on *habeas corpus* by a court of the United States.‡ A person prosecuted by a state for acts done as a belligerent against the United States during the late Civil War, could not be enlarged by one of the national courts through the use of this writ.§ For more than forty years the writ of *habeas corpus* was used by the federal courts subject to the restraints imposed by this proviso. Then, in 1833, came the nullification ordinance of South Carolina, followed by arrests under state process of revenue officers of the United States. No government capable of preserving its own existence, or worthy of the name, could submit to have the collection of its revenue resisted, and the enforcement of its laws impeded in this way; nor could it brook the delays consequent upon regular trials in the state courts, appeals to the state court of last resort, and writs of error to

* Act of Sept. 24, 1789, ch. 20; U. S. Stat. at Large, 82.

† *Ex parte Dorr*, 3 How. U. S. 103 See also U. S. vs. French, 1 Gall. 2.

‡ *Ex parte Cabrera*, 1 Wash. C. C. 232.

§ *Ex parte McCann*, 5 Am. Law Reg. N. S. 158, note.

the Supreme Court of the United States. A speedy remedy was necessary for the protection of its own agencies against unlawful state interference; and this remedy was found in the act of 1833, "to provide for the collection of duties on imports," the seventh section of which gave the courts of the United States power to grant writs of *habeas corpus* "in all cases of a prisoner or prisoners in jail or confinement where he or they shall be committed or confined, on or by any authority or law, for any act done or omitted to be done, in pursuance of a law of the United States, or any order, process, or decree of any judge or court thereof, anything in any act of Congress to the contrary notwithstanding."* Twenty years later the provisions of this salutary law were turned against those who, by the use of state process, attempted to obstruct the enforcement of the Fugitive Slave Law of 1850.† Then, in 1837, came the Canadian Rebellion and the complications which grew out of the attack by a force of British troops upon the steamer *Caroline*, moored to the shore of the state of New York in the Niagara river, which steamer had been employed in conveying supplies and munitions of war to a force of Canadian insurgents on Navy Island. A member of this attacking force was arrested in the State of New York and indicted for murder. After some correspondence, the British government demanded of our government his immediate release. In the face of this demand, the Supreme Court of New York refused to discharge him on *habeas corpus*.‡ A serious international complication might have followed, but for the accidental circumstance that, upon his trial under the indictment for murder, he was acquitted. The inability of the

* Act of March 2, 1833, ch. 57; 4 U. S. Stat. at Large, 634.

† *Ex parte Robinson*, 6 McLean, 355; *Ex parte Jenkins*, 2 Wall. Jr. 521; *U. S. vs. Morris*, 2 Am. Law Reg. O. S. 348.

‡ *People vs. McLeod*, 1 Hill, 377.

federal government to deal with such a case through its own tribunals became thus apparent; and the Congress, to meet such a case, passed the act of 1842, which clothed the national courts with power to grant writs of *habeas corpus* in all cases of aliens in confinement for acts done under the authority or sanction of their government, or under the law of nations.* This statute gave an appeal, in the cases of *habeas corpus* authorized by it, to the Supreme Court of the United States; and it is the only federal statute relating to the writ of *habeas corpus* which retains this characteristic,† except those relating to the territories. Then followed the Civil War, and the act of 1863 authorizing the President, by proclamation, to suspend the writ of *habeas corpus* in certain cases, and providing a mode by which federal prisoners might be speedily brought to trial.‡ This ended in the emancipation of four million slaves. The nation which had emancipated them was bound to establish and protect them in their civil rights. The celebrated law enacted for that purpose in 1866§ was deemed ineffectual without a further extension of the powers of the national courts in the use of the writ of *habeas corpus*. This led, in 1867, to a radical and sweeping extension of the jurisdiction of these courts under this writ to "all cases where any person may be restrained of his or her liberty in violation of the Constitution or of any treaty or law of the United States."|| As construed by the federal judges, this provision has wiped out as with a sponge the proviso of the act of 1789; has clothed the dis-

* Act of Aug. 29, 1842, ch. 257; 5 U. S. Stat. at Large, 539.

† Rev. Stat. U. S. §§ 763, 764.

‡ Act of March 3, 1863, ch. 81; 12 U. S. Stat. at Large, 755. See *Ex parte Milligan*, 4 Wall. 3, 117.

§ Act of April 9, 1866, ch. 31; 14 U. S. Stat. at Large, 27.

|| Act of Feb. 5, 1867, ch. 28; 14 U. S. Stat. at Large, 385. This provision is embodied in section 753 of the Revised Statutes of the United States.

strict and circuit judges of the United States with power to annul the criminal process of the States, to reverse and set aside by *habeas corpus* the criminal judgments of the state courts, to pass finally and conclusively upon the validity of the criminal codes, the police regulations, and even the constitutions of the states.

No doubt it was intended by the framers of the act of 1867, that persons arrested upon state process might be enlarged by the federal judicatories by means of this writ. But it is not at all clear that it was intended that it should become a means in the hands of the federal district and circuit judges of revising and reversing the judgments of the courts of the states without regard to their rank or dignity. The writ of *habeas corpus* is a common-law writ. Its origin reaches back into the night of English history so far that no man can fix its date. Its use has been circumscribed by certain ancient and well settled principles. One of these principles is that it cannot be used as a means of reversing and annulling a judgment of a superior court of record having general jurisdiction of the subject-matter in respect of which the judgment was rendered. This doctrine, declared by the English and American courts in several hundred reported judgments, reaching back through a period of two centuries, has never been better expressed than by Chief Justice Marshall, in giving the judgment of the Supreme Court of the United States in the celebrated case of *Watkins*: "The prisoner is detained in the prison by virtue of the judgment of a court, which court possesses general and final jurisdiction in criminal cases. Can this judgment be re-examined upon a writ of *habeas corpus*? This writ is, as has been stated, in the nature of a writ of error, which brings up the body of the prisoner with the cause of commitment. The court can undoubtedly inquire into the sufficiency of that cause; but if it be the judgment of a court of competent jurisdiction,

especially a judgment withdrawn by law from the revision of this court, is not that judgment in itself sufficient cause? Can the court, upon this writ, look beyond the judgment, and re-examine the charges on which it was rendered? A judgment, in its nature, concludes the subject upon which it was rendered, and pronounces the law of the case. The judgment of a court of record, whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact by deciding it."* The English judges announce the same principle by saying that the writ of *habeas corpus* never extends to the case of a prisoner in execution under a judgment rendered according to the course of the common law.† The judges of the state judicatories discharge their official functions under an oath to support the Constitution of the United States, equally with the judges of the federal courts. The Constitution of the United States, the acts of Congress made in pursuance thereof, the treaties made with foreign countries—while not being laws of the state, are, nevertheless, laws *within* the state. They are, by the terms of the Constitution itself, the "supreme law of the land." Every judge of a state court must, upon the obligation of his oath, administer them and give effect to them as such; and his obligation to do so is just as strong as the same obligation when resting upon the shoulders of a judge of a federal court. If, acting within the general scope of his jurisdiction, in pronouncing judgment in a criminal case, he adjudges that the defendant suffer punishment for a crime, when, under the Constitution and laws of the United States, he ought not so to suffer, he has, at most, committed an error. He has committed no greater error than he commits when, in pronouncing such a judgment, he condemns the accused

* *Ex parte Watkins*, 3 Pet. 193, 202.

† *Ld. Campbell in Ex parte Lees*, El. Bl. & El. 828, 836.

person to suffer contrary to the laws of the state which he is administering. There is no principle known to the common law, and none embodied in the English Habeas Corpus Act, by which this error is to be reversed in a collateral proceeding by means of the writ of *habeas corpus*. It is true that courts have at times departed from this principle; but, except in the cases which I am about to consider, the courts which have done so have been courts possessing an *appellate* or *superintending* jurisdiction over the courts whose judgments have been thus reversed or corrected.* In the language of Chief Justice Marshall, his judgment has pronounced the law of the case; and, however obvious to another judge, or to another tribunal, the error of that judgment may be, it must stand as the law of the case until reversed in a direct proceeding given by law for that purpose. It is a well settled principle of statutory construction that statutes relating to a subject founded upon the common law are to be construed with reference to the rules and principles of the common law, and are not to be extended beyond the plain import of their terms, when in derogation of that law. This principle forbids that the act of 1867 should be extended to the overthrowing, in collateral proceedings by the summary process of *habeas corpus* used by the inferior federal judges, of the judgments and decrees of the courts of the several states. They have not, it is true, denied this salutary rule; but they have proceeded upon the view that the cases before them did not fall within it. They have disclaimed the purpose of revising, upon *habeas corpus*, the judgments of the state courts for mere error; but they have asserted the right to pass upon the *jurisdiction* of these courts, and the validity of the laws upon which that jurisdiction is founded, when tested by the

* *People vs. Liscomb*, 60 N. Y. 559; *Ex parte Lange*, 18 Wall. 163; *Ex parte Rowland*, 104 U. S. 604; *Ex parte Curtis*, 106 U. S. 371; *Ex parte Carll*, *id.* 521.

Constitution of the United States, the acts of Congress, and treaties made with foreign countries. In so holding, they have forgotten that the question was not merely a question of the jurisdiction of particular courts, but a question of the jurisdiction of a *state*. It was not a question of *judicial power* merely, but of *sovereign power*. Where the question assumes this magnitude, there is no sound principle under which its erroneous decision renders void the judgment in which such decision is involved, in the sense that it is a mere nullity, liable to be disregarded or overthrown in any collateral proceeding; liable to have the process by which it is sought to execute it intercepted and annulled by the process of a co-ordinate tribunal, such process affording no protection to the officers who attempt to execute it, but they being mere trespassers. It is true that a court cannot create for itself a jurisdiction which it does not possess, by deciding that it has such jurisdiction; but where the question involved does not relate to its own peculiar powers, but to the powers of its sovereign, its judgment upon that question, by every sound principle, concludes the question for the purposes of the particular case until regularly reversed by appeal or writ of error, as much as it concludes any other question involved in the case. By thus assuming to pass upon the jurisdiction of the courts of the states, these inferior federal courts lift themselves out of the category of courts co-ordinate with those of the states, and take upon themselves the exercise of a *superintending jurisdiction* over the state tribunals. It cannot be doubted that they have come to regard themselves as entitled to exercise, by this means, a supervisory authority over the state courts, because they have said so.*

* Thus, in *ex parte Bridges*, 2 Woods, 428, 430, Mr. Justice Bradley, at circuit, used this language: "It is contended, however, that where the defendant has been regularly indicted, tried, and convicted in a state

Such a use of the writ of *habeas corpus* might not produce serious concern, if the law afforded a means by which the judgments of the federal district and circuit courts, where such judgments result in annulling the laws or constitutional ordinances of the United States, might be brought before the Supreme Court of the United States for revision. But there is no such provision of law. Proceedings by *habeas corpus* are deemed to be civil proceedings. If two judges happen to sit upon the federal bench at circuit in a case under this writ, and they happen to differ in opinion, the question of difference may be certified to the supreme court for determination, but only after judgment, the judgment being entered according to the opinion of the presiding judge.* If the proceeding results in *remanding* the prisoner to custody, the Supreme Court of the United States may, asserting by means of its writs of *habeas corpus* and *certiorari*, an appellate jurisdiction which it has long used,† bring up the proceedings for revision.‡ But where it results in *discharging* the prisoner, it is, except in the single case of the arrest of aliens for acts done under the authority of their government, already mentioned, a finality, although it may also result in

court, his only remedy is to carry the judgment to the court of last resort, and thence by writ of error to the Supreme Court of the United States, and that it is too late for a *habeas corpus* to issue from a federal court in such a case. This might be so if the proceeding in the state court were merely erroneous; but where it is void for want of jurisdiction, *habeas corpus* will lie, and may be issued by any court or judge *invested with supervisory jurisdiction in such case*." The judge who was "invested with supervisory jurisdiction" in that particular case, was a district judge, from whose decision (*sub nom.* *Brown vs. United States*, 14 Am. Law Reg., N. S. 566) the case was taken on appeal to the circuit court.

* *Ex parte* Tom Tong, 17 Centr. L. J. 89.

† *Ex parte* Hamilton, 3 Dall. 17; *Ex parte* Burford, 3 Cranch, 448; *Ex parte* Bollman, 4 Cranch, 75; *Ex parte* Yerger, 8 Wall. 85; *Ex parte* Lange, 18 Wall. 163; *Ex parte* Jackson, 96 U. S. 727; *Ex parte* Virginia, 100 U. S. 339; *Ex parte* Reed, *id.* 13; *Ex parte* Siebold, *id.* 371.

‡ *Ex parte* Yerger, 8 Wall. 85; *Ex parte* Reed, 100 U. S. 13.

overturning a law or a constitutional ordinance of a state. In this way the inferior federal courts have unlocked the penitentiaries of the states,* exercised the power and authority of passing finally and conclusively upon the validity of state laws, and even of the ordinances of state constitutions;† and we have recently seen the extraordinary spectacle of a judgment of the supreme court of a state subjected, by means of the writ of *habeas corpus*, to re-examination before a federal district judge, not indeed in respect of its merits, but in respect of the question whether the court which rendered it was a court at all.‡

I stated at the outset that the police regulations of the states, their criminal codes, the decisions of their highest judicatories, and even their constitutions, lie at the feet of the inferior federal judges. In view of what I have now pointed out, I ask your deliberate judgment upon the question whether it is not so. Is it not apparent that these judges, by a vigorous use of the writ of *habeas corpus*, intercepting the regular course of criminal justice in the states, may prevent the important questions which they thus assume to decide, from ever reaching a settlement in the Supreme Court of the United States? How, let me ask you, will such a question as was decided by the federal circuit court in California, in Parrott's Chinese case,§ ever get to the Supreme Court of the United States, as long as a federal judge stands ready to release every prisoner, whether before or after judgment, arrested or imprisoned under the constitutional ordinance and statute which the federal court in that case declared null and void? What motive will he have for prosecuting an appeal to the highest court of the state, and then a writ of error to the Supreme Court of the United

* *Ex parte Bridges*, 2 Woods, 428; *Ex parte Houghton*, 7 Fed. Rep. 657; *Re Wong Yung Quy*, 6 Sawy. 237; *Re Ah Chong*, 6 Sawy. 451.

† *Parrott's Chinese Case*, 6 Sawy. 349.

‡ *Re Ah Lee*, 6 Sawy. 410.

§ 6 Sawy. 349.

States, when a federal judge stands ready to unlock the jail or penitentiary and discharge him at any stage of the proceedings? Am I not justified, then, in asserting that the inferior federal courts have, by the use of the writ of *habeas corpus*, at once asserted a final appellate jurisdiction over the courts of the states, within the limits prescribed by their own views of the law, and at the same time absorbed an essential portion of the appellate jurisdiction of the Supreme Court of the United States? Was it ever intended by those who formed our federal system that the final decision of the gravest questions of constitutional law affecting the sovereign rights of the states should be committed to the inferior federal courts? On the contrary, did not the Constitution create *one* court to whose jurisdiction the final decision of such questions was to be committed?

The duty of supplying a remedy for this extraordinary state of things rests with Congress. Whenever a case has passed to judgment in a state tribunal, if the defendant thinks he is imprisoned contrary to the Constitution of the United States, to an act of Congress, or to a public treaty, he should be put to his appeal to the highest court of his state in which the question is examinable, and then to a writ of error to the Supreme Court of the United States. If these processes are thought too slow to vindicate the right of personal liberty, the least that Congress can do is to provide a mode by which the decisions of the federal circuit and district courts may be re-examined in the Supreme Court of the United States. Such an appellate proceeding need not operate as a *supersedeas* of the judgment of the federal court; it need not bar the prisoner of his right to an immediate release, if that be his right; but the state whose laws or constitutional ordinances are thus overturned, should be allowed in some way to bring the questions of their validity to the arbitrament court appointed by the Constitution for the final settlement of such questions.

ANNUAL ADDRESS
BY
JOHN W. STEVENSON.

JAMES MADISON.

Gentlemen of the American Bar Association,—The wisdom of our fathers has vouchsafed to us a constitution of government marvelous in its conception, most beneficent in its results.

The century has not yet closed within which thirteen independent sovereign states, weakened and worn down by a protracted and bloody revolutionary struggle for their independence against the arbitrary oppression of their mother country; embarrassed with debt; overwhelmed with a depreciated and almost worthless paper currency; with limited powers; and at a period (it has been said) the most critical, if not the most fearful, in the history of the human race, being that preceding the early French Revolution,—formed and ratified the Constitution of the United States, creating thereby the union of the states under a compound form of constitutional self-government, the constitution enumerating all the powers delegated to the new government, reserving all others to the states or to the people.

The far-seeing founders of this experimental system of government, versed as they were in the former failure of popular efforts in that direction, not less than thoroughly conversant with the character, circumstances, and genius of the people whose organs they were in that great work, sought to found a free republic in which the people were

the source of all sovereign power, empowered to administer the government through certain delegated agencies, to each of which was assigned and marked out certain well-defined orbits of action, prescribed in the Constitution, declared to be the supreme law, binding personally upon the people and their agents, and so to remain until changed by a like solemn and authentic act of the public will, in manner and form prescribed therein.

It was under such a government, with its mutual checks and balances, its barriers against every assumption of arbitrary, unlicensed power—from within or from without; from one, from the few, or the many—and especially by a just and proper distribution of the federal power with the local systems of the states, that its authors foresaw the highest guarantee for public order, peace, and individual liberty. To-day, as we look back on the faith and courage of these founders of our government, after the experience of ninety-six years of their work, what American heart is not lifted up in thankfulness to God for his merciful protection, and with grateful wonder at the reach of practical wisdom and far-seeing statesmanship displayed in the formation of the Constitution of the United States! Compare, I pray you, the condition of the country then and now.

With a population of three millions when our national existence commenced, we number to-day more than fifty millions of freemen; and that proportionate influx continues annually to increase as the years flow onward. Our boundaries, then not reaching the gulf of Mexico, extend now from Alaska to Mexico, and from the Atlantic to the Pacific oceans.

Our revolutionary debt has been long since extinguished; our national faith and credit maintained throughout the world; the American flag covering every sea; civil and religious liberty upheld; the rights, claims, and interest of

the people faithfully preserved and fearlessly maintained; and our republic, the power of freedom and the open foe of all human oppression, stands at this moment in the forefront of the nations of the world.

Such have been some of the triumphs and blessings of the government created by the Constitution of the United States. It has been said by an eminent American statesman, now passed away, that the personal character of our public men—their moral principles, their intellectual qualities and attainments, the circumstances which have contributed to form or develop them in either aspect—become an interesting and attractive subject for historic or professional inquiry, and, by a natural and just relation, often go hand in hand with the great public questions in which they have in former years borne a distinguished part.

Concurring in the justice of this sentiment, I have persuaded myself that a brief notice of the life, public services, and a few personal reminiscences of a prominent actor in the formation and establishment of the great constitutional compact of government and union which crowned the labors of our revolutionary sages; of one who subsequently became the pure, wise, and able administrator of the government which that Constitution created, might prove to my professional brethren of this Association not wholly an uninteresting topic on which to address them.

I am therefore briefly to speak to you of James Madison, the fourth President of the United States. This illustrious Virginian was born on the 16th day of March, 1751, at the house of his maternal grandmother, Mrs. Eleanor Conway, on the north side of the Rappahannock River, in the county of King George, in the commonwealth of Virginia.

The residence of his parents at that time was in the county of Orange, fifty or sixty miles distant; but his birth

took place during a visit of his mother to her ancestral home in the Northern Neck of Virginia, a designation which was originally, and is still popularly confined to the narrow slip of land lying on the tidewater, between the Potomac and Rappahannock rivers, beginning below Fredericksburg, and running eastwardly to the Chesapeake Bay, including the present counties of King George, Westmoreland, Northumberland, and Lancaster.

That peninsula has been consecrated in the annals of Virginia as the birthplace of many of her most illustrious sons. There Washington, the Lees, the Monroes, the Masons, the Carters, first saw the light. Madison was thus "from the moment, not less than by the accident of his nativity, brought into early and close proximity and fellowship with many of those with whom he was destined in after life to become associated in some of the most eventful passages of his future life, and of the public history." His father, bearing the same name with himself, was a large landed proprietor, and devoted himself to rural pursuits. It does not appear that he was ever engaged in political affairs. He was a leading man in the business of his county, and held during the period of the Revolutionary War the ancient traditional office of "county lieutenant," derived from the institution of the mother country, the duties of which he performed with patriotic zeal and diligence.

He resided during his whole life upon the Montpelier estate, in Orange County, which became at his death the residence of his son James, as it had been of his father Ambrose. It was always the abode of a charming hospitality, rendered doubly attractive by the picturesque grandeur of its mountain scenery, and the heartiness and cordiality of its possessor. The mother of Mr. Madison, Eleanor Conway, was a most lovely and accomplished

woman, and it was her excellence which largely added to the attractions of that lovely home.

The young Virginian, the eldest of a family of seven children, began his novitiate at a school of much reputation at that day, in the county of King and Queen, conducted by a Scotchman named Donald Robertson. In this school he was instructed in the Latin, Greek, French, and Spanish languages. He subsequently prosecuted his studies at home, under the tuition of Rev. Thomas Martin, of New Jersey, and the established minister of the parish, who lived at that time in the family of Montpelier, and whose brother subsequently became the governor of North Carolina.

James Madison, having been well prepared, entered the freshman class of Nassau Hall in the year 1769. What induced young Madison to select a college in New Jersey in preference to that of William and Mary, in Williamsburg, Virginia, at which most of the young Virginians then matriculated, and which enjoyed a great reputation, will probably never be certainly known. Whether it was the supposed unhealthiness of the climate in lower Virginia, especially upon a resident of the mountains; or to an unfortunate condition of affairs between the visitors of William and Mary College and the faculty of that college, which was at that time existing; or to the then nascent reputation of Nassau Hall, largely increased by the accession of Dr. Witherspoon, a year or two before, to the presidency of that institution, with the prestige of a brilliant European renown, alike as a patriot, a philosopher, and a scholar, will probably never be known; nor is it important that it should be; for, whatever the cause, none will doubt that James Madison's collegiate course at Princeton, the qualification and greatness of Dr. Witherspoon and his associates as professors; and the political and public occurrences which were, at the time young Madison entered

college, in 1769, exciting both continents, became, conjointly, potential factors in shaping and influencing his after life.

The year 1769 was pregnant with momentous events. It witnessed the fatal renewal of the controversies between the colonies and the mother country, which were so soon to merge into a bloody revolution, and end in the disruption of all allegiance to the British Empire.

While these agitating events were beginning to excite America just as Madison was entering college, by a strange coincidence they were equalled by others of profounder interest occurring at the same period in the domestic politics of England.

The ever-noted resolution of the House of Commons nullifying the election of John Wilkes from the county of Middlesex, so memorable in English parliamentary history, dates from that year. His exclusion added fresh tinder to the flame of political excitement, with which the question of American freedom was already beginning to convulse the British Empire.

In one of the earliest letters written by young Madison from Princeton, dated 10th August, 1769, he incloses two pamphlets entitled *Britannia's Intercession for John Wilkes*, for the perusal of his father and his late tutor, Rev. Thomas Martin.

Among the political writers of that hour, one will forever signalize the year 1769 by the grandeur of its renown, as that in which the letters of Junius to the *Public Advertiser* first appeared.

Such thronging issues at home and abroad were well calculated to stir and arouse the minds of the young manhood of the American colonies. Madison was naturally and by training especially interested in these pending questions. That interest was gradually intensified by his college associations. There was in the kindred zeal and

high scholarship of his associates much that impelled young Madison forward in his unremitting efforts of self-discipline and improvement. Among these classmates and cotemporaries were Samuel Stanhope Smith, the son-in-law of Dr. Witherspoon, and his successor in the presidency of Nassau Hall; Brockholst Livingston, afterwards judge of the Supreme Court of the United States; William Bradford, Attorney General of the United States, appointed by George Washington; Aaron Burr; Morgan Lewis, of New York; John Henry, who became member of Congress of the Confederation, senator, and governor of Maryland; Henry Lee; and Aaron Ogden, of New Jersey. With many of these associates Mr. Madison was destined to renew, upon the theatre of a wider and more distinguished public service, the intimacy of their early collegiate life.

Mr. Madison took his bachelor degree in 1771 at Princeton, having completed the entire collegiate course of junior and senior classes in a single year. He returned a year afterwards as a resident student to study Hebrew, and to avail himself of the advantages of the college library and the benefit of increased attention paid to metaphysical and historical study, introduced by Dr. Witherspoon. It was here, it has been said, "that Mr. Madison acquired the habit of systematic study, and formed a taste of that sort of inquiry which in after life gave to his political writings a philosophic cast, which distinguished them eminently and favorably from the productions of the ablest of his cotemporaries."

The young men both at Williamsburg and at Princeton, in those days, were animated with a high spirit of public liberty and a jealous love of constitutional freedom. One of the outgrowths of this patriotic excitement among the students at Princeton was the formation of a new society, "The American Whig Society," of which Mr. Madison is

reported to have been one of the chief founders, and which, it is believed, still survives and prospers.

Mr. Madison left Princeton in 1772, then twenty-one, to return to Orange County, and take up his residence at his paternal home, with a bright intellect, systematically trained to philosophic, clear thought, and filled with information and learning.

The limits of this paper will not permit me to go into a lengthened sketch of Mr. Madison's life, or of his eminent public services. I must confine its statements to a brief summary of a few of the most brilliant and eventful, which marked his long and valuable life.

Mr. Madison entered the public service for the first time as a representative from Orange County, to the convention which assembled in Williamsburg on 9th May, 1776. It was a convocation of "the Conscript Fathers of the Colony, called together by a crisis of the most momentous character, to take counsel for the public liberty and safety." Upon its roll of membership were found the names of Edmund Pendleton, its President; George Mason, Patrick Henry, George Wythe, Thomas Ludwell Lee, Robert Carter Nicholas, Archibald Cary, with other names lustrous in Virginia's calendar, who, by their heroic devotion to liberty, had at that early day consecrated themselves in the popular heart, as fearless leaders of a public opinion indignant under further subjection to English oppression, and determined to be free. The time had come for final severance of the colony from the mother country, and the necessity seemed self-evident for a new and independent government. A nobler band of enlightened statesmen was never assembled in the cause of liberty and for the rights of man. In vain would we look for superior proofs of wisdom, talent, and patriotism.

The convention assembled on the 9th of May, 1776. Upon the fourteenth it resolved itself into a committee of

the whole to consider the state of the colony, and reported progress through its Chairman, Mr. Cary, and asked leave to sit again. Leave was granted.

On the succeeding day, May 15, 1776, the convention again resolved itself into a committee of the whole, and after some time spent therein, the committee rose. The President resumed the chair, and Mr. Cary, the Chairman, reported they had come to certain resolutions, which he read in his place, and then delivered in at the clerk's table, where the same were again twice read, and *unanimously* agreed to, one hundred and twelve members being present. (See Journal of Convention, p. 12.)

And what were these resolves which evoked such unanimity at a time of intense popular excitement and public danger from this assembly of wise and brave men?

Resolutions recapitulated in a clear, vigorous summary the wrongs inflicted by the King and Parliament of Great Britain upon her American colonies. They declared that there was no alternative "but abject submission to the will of these overbearing tyrants, or a total separation from the Crown and government of Great Britain, uniting and exerting the strength of all America for defense, and forming alliances with foreign powers for commerce and aid in war," and concluding with solemn and absolute instructions to the delegates from Virginia in the General Congress, "to propose to that body to declare the United Colonies free and independent states, absolved from all allegiance to or dependence on the Crown or Parliament of Great Britain; and they give the assent of this colony to such declaration, and to whatever measures may be thought proper and necessary by the Congress for forming foreign alliances and a confederation of the colonies."

This was Virginia's first authentic trumpet-note of liberty to the Old and New World. It was the first decided move-

ment of a competent authority in any of the colonies in favor of independence.

The Provincial Congress of North Carolina had, it is true, on the 12th of April, 1776, passed resolutions which empowered their delegates in Congress to concur with delegates of the other colonies in declaring independence and forming foreign alliances.

But however patriotic and meritorious these resolves were, they simply gave to the North Carolina delegates the power, if they thought proper to exercise it, to concur in a measure which might or might not be brought forward by others; while the resolutions of Virginia imposed upon her representatives the obligation to propose that measure unconditionally, and to take, in her name, all the responsibility of a courageous and unhesitating lead in the cause of freedom.

In obedience to these instructions, the delegates from Virginia, in the general Congress upon 7th June, 1776, brought forward in that body a resolution declaring "that these United Colonies are, and of right *ought to be*, free and independent states; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved."

This resolution was, as it is well known, debated in Congress on the 8th and 10th of June, on the last of which days it was referred, without a vote, to a select committee, charged with the duty of "preparing a declaration to effectuate the said resolution."

It had been hoped that a delay of a few weeks would silence the opposition which the resolution had encountered, hence its postponement to July 1. Upon that day and the following, the debate was renewed. The resolution as proposed by the delegates of Virginia, in pursuance of their

instructions from the Virginia convention, was then formally adopted by the House; and two days later the memorable declaration prepared by Thomas Jefferson, proclaiming to the world the birth of a Republic in America, received in the bosom of Congress its last sanction, by the individual and responsible signatures of the delegates of the several colonies. (Journal old Congress, vol. i. pp. 368, 369, 392-396. Jefferson's Writings, vol. i. pp. 10-16, 96-100.)

But the work of this Virginia convention of 1776 did not end with this great achievement in support of the independence of America. Upon the same day, and with the same unanimity with which that body adopted the eventful instructions to their delegates in Congress, the convention resolved with like unanimity, says the historian, "that a committee be appointed to prepare a Declaration of Rights, and such a plan of government as will be most likely to maintain peace and order in this Colony, and secure substantial and equal liberty to the people."

The committee intrusted with this great work, consisted of twenty-eight members. They embraced the most eminent and distinguished representative men of the convention: George Mason, Archibald Cary, Patrick Henry, Richard Bland, Merriwether Smith, Robert Carter Nicholas, and others, who, if less known to fame, had nevertheless given solid proof of practical wisdom and capacity for government.

On the day after the appointment of the committee, James Madison, then but twenty-five years old, serving his first term in any deliberative body, was added by special motion to that committee. One day later, George Mason, destined to be the master spirit of the committee, who was absent from sickness when the committee was formed, was likewise made a member of it.

The grandeur and difficulty of the trust confided to this committee was only commensurate with its dignity and

importance. The first written constitution for a sovereign and independent state, which the history of the world had yet evoked, was now to be formed and adjusted to the new and untried circumstances of American freedom. The Declaration of Rights was, with a few amendments, the work of George Mason, and was unanimously adopted by the convention. It is a massive and undying monument of American liberty. In it are found "a condensed, logical, and luminous summary of the great principles of freedom inherited by us from our British ancestry; the extracted essence of Magna Charta, Petition of Right, the acts of the Long Parliament, and the doctrines of the Revolution of 1688, as expounded by Locke, distilled and concentrated in the alembic of George Mason's powerful and discriminating mind." It has stood the rude test of every vicissitude, and yet stands, "*sans peur, sans reproche*," without the change of a letter, at the head of every constitution of Virginia adopted since that time, however difficult it may be to reconcile with its eternal principles some of the extravaganzas of the more modern plan of government adopted in recent years by that honored old commonwealth.

Its enunciated truths have found places in the constitutional acts of many of the other states, as well as in those amendments of the Constitution of the United States which were deemed by the first Congress indispensable to complete the fabric of American liberty and union.

The original draft of the Declaration of Rights, in Mr. Mason's own handwriting, is sacredly enshrined, as it deserves to be, in the public library of the old commonwealth at Richmond. By a comparison with this original draft and the copy reported by the committee, and found among the papers of Mr. Madison, the few verbal alterations made by the committee from Mr. Mason's draft are at once perceptible.

There was one amendment made by the convention which it is proper to notice, not less from its own intrinsic importance of the principle involved, than from the connection of Mr. Madison with it.

The last article of Colonel Mason's draft related to religious freedom, declaring that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed by reason and conviction, not by force and violence; and hence, "that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless under color of religion any man disturb the peace, the happiness, or the safety of society."

To Mr. Madison's discriminating mind there seemed to be a dangerous and illogical implication in the use of the word "toleration," as well as in the clause which admitted the restraining and punitive interposition of the civil magistrate in cases where the peace of society might be supposed to be endangered.

Toleration is not the opposite of intolerance, but is the counterfeit of it. Both are despotisms. The one assumes to itself the right of withholding liberty of conscience; the other, of granting it. Toleration belonged to a system in which there was an Established Church, and where a certain liberty of conscience is granted, not of right, but of grace, to dissenting denominations; and the exception to this granted liberty, in cases where the peace of society might be alleged to be in danger of being disturbed, was one which, in the hands of the dominant power, might easily be so construed as to impair, if not annul, the grant.

Mr. Madison, modest and young as he was, felt constrained, therefore, to offer an amendment; and instead of affirming that "all men should enjoy the fullest toleration in the exercise of religion," etc., proposed to insert in lieu thereof, "the

inherent and indefeasible right, by nature, to freedom of religion, declaring that all men are equally entitled to the full and free exercise of it, according to the dictates of conscience." Thus closing the door against an abusive exercise of the authority of the civil magistrate under the clause of exception in Colonel Mason's draft, it added, "No man or class of men ought, on account of religion, to be invested with peculiar emoluments or privileges, nor subjected to any penalties or disabilities, unless, under color of religion, the preservation of equal liberty and the existence of the state are manifestly endangered."

The amendment of Mr. Madison prevailed, and thus early were his wisdom and vigilant love of liberty incorporated with one of the noblest and most enduring monuments of American freedom and constitutional law.

Upon June 29th, 1776, the first written constitution of Virginia was unanimously adopted. It is, and forever will remain, a lasting monument of the wisdom of those who framed it. The striking proof of its excellence is found in the fact that it stood for fifty-four years against assault and amendment from all quarters, in an age of change and innovation, but was superseded in 1829 by a new organic law, which since that period has given place to two or three others.

In the language of a distinguished Virginian, "There is hardly now a thinking man of any party in Virginia, who would not gladly exchange the modern structure, with all its novel and imaginary improvements, for that old constitution of 1776, just as it was, with only a necessary readjustment of representation to the changes which have taken place in the local distribution of the population."

The legislative assembly of Virginia under the new constitution, met for the first time in Williamsburg, on the 7th day of October, 1776. It met in an hour which

"tried men's souls." The tide of fortune was beginning to ebb, and the disastrous battle of Long Island, and the expulsion of the American army from the city of New York, by the overwhelming superiority of England's forces concentrated there, was the beginning of that mournful succession of reverses which tried to the uttermost alike the faith and patience of the peerless Washington and his fearless followers.

Mr. Jefferson, who had shortly before resigned his seat in the Continental Congress, the laurels still fresh which encircled his brow, as the author of the Declaration of Independence, now took his seat in the House of Delegates as the member from the county of Albemarle, while Mr. Madison was a delegate in the same body from the county of Orange.

In this memorable convocation these two patriots met for the first time; and then commenced that close fellowship of half a century, which afterwards subsisted between them, never dimmed by a shade of jealousy, or disturbed by a moment's alienation, though admitting the utmost freedom, and sometimes diversity of opinion, in their close fraternal relations with each other, as we shall have occasion to see, which forms a rare example of generous and elevated friendship, amid the contentions and vicissitudes of public life, that does honor to human nature.

The General Assembly of 1776, of which Mr. Jefferson was the acknowledged leader, was signalized by the act for the abolition of entails; the repeal of all laws which restrained by penal enactments the freedom of religious opinion or worship; the act to exempt dissenters from taxes or contributions for the support of the Established Church; and to dispense with any future promise for the support of ministers, reserving to the present incumbents of parishes the arrears of salaries actually due to them,

and their congregations the use and enjoyment of existing glebes, churches, and chapels, with their appendages. (Journal of House of Delegates, October Session, 1776, pp. 62, 63.)

In the advocacy of all these measures, Mr. Madison yielded his earnest and cordial support. His youth, combined with an extreme and innate modesty, restrained him from taking that prominent part in the discussion of them which talent and acquirement so well fitted him.

Mr. Madison was not returned to the succeeding General Assembly of Virginia, which then met semi-annually. He was defeated at the April election, 1777, in the county of Orange, by an influence unfortunately not uncommon in that day, and which, I mourn to say, prevails, I fear, to a much greater and more pernicious extent at this—the practice of treating at elections. This influence was known and prevailed in England, despite their penal prohibitory enactments, and became transplanted with the early representative institutions, which it tended to vitiate and corrupt, to the virgin soil of the New World.

Mr. Madison preferred, in that early hour of his promotion, to become a victim to the Spartan inflexibility of his principles, rather than yield one vote to this sad species of electioneering, believing, to use his own words, that “the reputation and success of representative government depended on the purity of popular elections.” The nobility and self-respect of such a statesman, justly elevated him far above the mortification of so undeserved and temporary a defeat. His retirement was of short duration. He was chosen by the joint ballot of the General Assembly of Virginia in 1777, to which he failed to be returned, a member of the Council of State—a body of eight men, created by the new constitution, whose duty was to participate with the governor in the exercise of all the executive

powers of the government, and without whose "advice," he could perform no official act.

The high functions of this office demanded, in the earlier days of Virginia, that none save such as were distinguished for patriotism, talent, and influence should be chosen councilor of state.

It was a just compliment to the unambitious and youthful Virginian, and a flattering proof of the high estimate entertained for him by the General Assembly, to have been nominated and elected to this position of responsibility, without his wish or knowledge.

Virginia's council chamber became another theatre for useful and patriotic labor on the part of young Madison to his native state. Here he acquired the habit of self-possession in the enunciation of his views, which was alone wanting to make him as lucid and powerful in debate as he was clear and profound in thought, and copious and overflowing in information. It was this service of Mr. Madison as councilor of state, with his associates, the Pages, the Blairs, the Harrisons, the Walkers, and the Marshalls, that prepared and trained him for the highest and most enduring triumphs of his after life. In this position he soon commended himself to the confidence of Patrick Henry, who was then serving his second year as the first governor of Virginia under the new constitution.

Governor Henry's known aversion to the labors of the pen, and Mr. Madison's known skill and facility as a writer, rendered the aid of the latter of incalculable value in the preparation of executive state papers, not less than in his foreign correspondence. Mr. Madison was the only member of the Executive Council at that time versed in foreign languages, and the number of foreign officers then in the army, especially in Virginia, who were in constant communication with the Executive, enabled him to render invaluable ser-

vice to the state. Mr. Jefferson succeeded Mr. Henry as governor. Mr. Madison continued to remain as councilor of state long enough to render much invaluable aid.

Upon December 14, 1779, at the age of twenty-eight, he was chosen by the General Assembly of Virginia one of the delegates to represent the commonwealth in the Congress of the Confederation. Mr. Madison took his seat in that body on March 28, 1780.

The brilliant and distinguished part performed by him in the Congress of the Confederation can never be overestimated. Let him speak as to the aspect of public affairs when he entered that body. I quote from a letter written to Mr. Jefferson, then governor of Virginia, dated March 27, 1781, only six days after he had taken his seat:

"Among the various conjectures of alarm and distress which have arisen in the course of the Revolution, it is with pain I affirm to you that no one can be singled out more truly critical than the present: our army threatened with an immediate alternative of disbanding or living on free quarters; the public treasury empty; public credit exhausted; nay, the private credit of purchasing-agents employed, I am told, as far as it will bear; Congress complaining of the extortion of the people, the people of the improvidence of Congress, and the army of both; our affairs requiring the most mature and systematic measures, and the urgency of occasions admitting only of temporizing expedients, and these expedients generating new difficulties; Congress recommending plans to the several states for execution, and the states separately rejudging the expediency of such plans, whereby the same distrust of concurrent exertions that has dampened the ardor of patriotic individuals, must produce the same effect among the states themselves; an old system of finance discarded as incompetent to our necessities, an untried and precarious one substituted, and a total stagna-

tion in prospect between the end of the former and the operation of the latter. These are the outlines of the picture of our public situation. I leave it to your own imagination to fill them up. Believe me, sir, as things now stand, if the states do not vigorously proceed in collecting the old money, and establishing funds for the credit of the new, we are undone; and let them be ever so expeditious in doing this, still the intermediate distress to our army and hindrance to public affairs are a subject of melancholy reflection."

Upon April 3, 1780, the commander-in-chief, moved by the alarming condition of public affairs, addressed a letter to the President of Congress, as follows:

"I think it my duty to touch upon the general situation of the army at this juncture. It is absolutely necessary that Congress should be apprised of it, for it is difficult to see what may be the result; and as very serious consequences are to be apprehended, I should not be justified in preserving silence. There never has been a stage of the war in which the dissatisfaction has been so general and alarming. It has lately, in particular instances, worn features of a very dangerous complexion."

No problems more complex or arduous were ever presented for solution than those which the war of the Revolution originated. Mr. Madison entered Congress, as we have seen, at the moment when the system of paper credit, by which the war had been hitherto supported, experienced a sudden and fearful collapse, and when it became imperiously necessary to provide other financial resources, both at home and abroad. New and most important relations with the powers of Europe were also thus inaugurated, not only by the alliance of France, but by the successive mediations offered for the re-establishment of peace, and especially in the negotiations with Spain, who demanded, as the price

of her support, the surrender of the Mississippi River and of the Western country.

In the solution of all these great and difficult questions, Mr. Madison took a prominent and distinguished part. His impregnable argument for the free navigation of the Mississippi River, in 1781, when South Carolina, Georgia, and even Virginia, hoping to conciliate Spain to the Revolutionary cause, were willing to instruct our minister, Mr. Jay, in his pending negotiations abroad, to yield up their claim, will live as long as time lasts. Mr. Madison based the claim of the colonies to the free navigation of the Mississippi River, first under the 7th clause of the Treaty of Paris, whereby that right was guaranteed to England and her subjects, which subjects the American colonies then were; second, upon the great fundamental principle of the Law of Nations, which forbade Spain, being, under the cession from France, in possession of both banks of the Mississippi, at or near its mouth, from obstructing the free navigation of the same to the inhabitants of *the country above*.

Such an assumption, he insisted, would authorize a nation disposed to take advantage of circumstances, to contravene the clear indications of Nature and Providence and the general good of mankind. If the Law of Nations authorized an innocent passage, even with troops, through the territory of a foreign power, how much more might a passage by water be claimed for commerce, which is beneficial to all nations.

Mr. Madison entered Congress with no ambition to become a leader; but his just and elevated spirit, his disciplined statesmanship, superior knowledge, well balanced, cool judgment, soon placed him at the head of the most important committees, and, though but thirty years of age, yielded to him great prominence in a body composed of

such men as Samuel Adams, Gerry, Wilson, Peters, Witherspoon, Ellsworth, Sherman, Alexander Hamilton, Livingston, Rutledge, Randolph, Middleton, Patterson, and Lee.

By the law of Virginia, at the period of Mr. Madison's election to the Congress of the Confederation in 1779, the term of service was limited to three years, and his term expired in 1782. But the General Assembly of Virginia paid him the high compliment of repealing the act which rendered him ineligible, and he was chosen a fourth term of consecutive service in the Continental Congress.

Congress, on October 24, 1781, received official information of the capitulation, from a letter from the commander-in-chief; and went on the same day at two o'clock, in procession, to the Dutch Lutheran Church, "to return thanks to Almighty God for crowning the allied armies of the United States and France with success, by the surrender of the whole British army under Earl Cornwallis."

It was further resolved, "That the United States, in Congress assembled, will cause to be erected at Yorktown, in Virginia, a marble column adorned with emblems of the alliance between the United States and his most Christian Majesty, and inscribed with a succinct narrative of the great event, which must render that spot forever memorable in the pages of history."

More than a hundred years have elapsed since the surrender of Yorktown; all the officers and men, both foreigners and natives, who took part in that august and glorious event, and to whose valor its success is attributable, have long since passed away;

"Their spirits wrap the dusky mountain;
Their spirits sparkle o'er the fountain;
The meanest rill, the mightiest river,
Goes mingling with their fame forever;"

but no *marble shaft* yet marks that consecrated spot. That

solemn pledge of national faith remains as yet unfulfilled. But the United States has not repudiated that obligation. Already, under a resolution of Congress, the long delayed work has been inaugurated. But a few more years are destined to witness the fulfillment of the country's pledge, by the completion of an appropriate shaft upon the spot of Great Britain's eventful capitulation to the army of her American colonies. Yorktown, like Bunker Hill, will each lift up their respective tokens in commemoration alike of the beginning and of the close of our revolutionary struggle for liberty.

I pass over all the negotiations for peace: the various commissioners sent abroad, and the continued attempts of England to debauch the United States from an alliance with France, and their persistent efforts, by every species of diplomacy and venality, to make a peace unworthy of the gallantry, patriotism, and freedom of the United States. Every effort found an implacable foe in the person of James Madison. To all these efforts he replied, in words which should be always perpetuated: "Our business is plain: fidelity to our allies, and vigor in military preparations—these, and these alone, will secure us against all political devices." (*Madison's Debates and Correspondence*, vol. i. p. 125.)

Nor have I time to dwell on the difficulty of adjusting the questions of compensation to the army—their half pay for life, after the adoption of the provisional articles of peace, and Mr. Madison's prominence in their adjustment.

Upon September 3, 1783, the definite and final treaty of peace was agreed upon, executed, and interchanged at Paris, and the protracted conflict of arms between the mother country, England, and her colonies was celebrated by Congress in a parting address, containing a high and justly wrought tribute to the civic as well as the military virtues of the defenders of American freedom, as well as by a public

thanksgiving to Almighty God for his mercy in vouchsafing so auspicious a victory to the colonial army, in a contest so unequal, and amid such trials, perils, and difficulties.

This was the closing scene of Mr. Madison's service in the Congress of the Confederation, where for four years he had rendered such able and unceasing service to his native state. At the close of his congressional career, Mr. Madison returned to his paternal home in December, 1783. Here he commenced the study of the law.

In writing to Edmund Randolph, March 10, 1784, Mr. Madison says: "Coke, Littleton, and a few others from the same shelf, have been my chief society during the winter." And in a letter to Lafayette, of March 20, 1785, he sportingly alludes to his law studies as follows: "I have nothing to say of myself, except that I have exchanged Richmond for Orange, and spend the chief of my time in reading, and the chief of my reading on law." His legal studies, although interrupted by the public duties which again devolved upon him, were nevertheless pursued with vigilance. Mr. Madison did nothing by halves. He was thorough and accurate in everything. While he never practised law, upon several occasions he gave signal proof of his accurate and thorough attainments in the law, one of which I cite as an apposite illustration.

Mr. Jefferson and Mr. Madison were both members of a board of commissioners appointed by the legislature of Virginia in 1818 to select a proper location for the University of Virginia. This board consisted of twenty-one members, including some of the most erudite and distinguished jurists and lawyers of the commonwealth. Of the first were judges Spencer Roane and William H. Cabell, of the Court of Appeals; judges Brockenbrough, Dade, Stewart, and Holmes, of the General Court; together with Chancellor Taylor. Of the latter, Philip C. Pendleton, James Madison,

General Breckenridge, and John G. Jackson, and others equally learned.

Among the considerations presented to influence the choice of the commissioners in their selection was an offer by Rockbridge County of a very valuable body of land in the neighborhood of Lexington, Virginia, for which a deed was tendered. The deed passed through the examination of the judges and lawyers without criticism. When Mr. Madison came to examine it, he suggested a doubt, founded upon some rather recondite doctrine of contingent remainders of real estate, whether the deed was absolutely valid in law. The defect was finally recognized by the board to be fatal to the validity of the deed, and it was so represented by the commissioners in their report to the Legislature, and the offer declined.

In the month of April, 1784, he was summoned from his retirement, again to enter the public service as a delegate from the county of Orange to the House of Delegates.

That session of the General Assembly of Virginia was the first since the close of the Revolutionary War, and the first since the resignation of George Washington as commander-in-chief of the American army. The old commonwealth was, through her chosen representatives, prompt to acknowledge the debt of gratitude so justly due to her peerless and illustrious son. A committee was appointed at an early day of the session, of which Mr. Madison was a member, to draw up an address, and to report what further measures might be necessary for perpetuating the gratitude and veneration of his country. An address was agreed on, and a resolution for the erection of a statue of Washington of the finest marble. Many before me have doubtless seen that grand *chef-d'œuvre* of Houdon in the Capitol at Richmond, and a copy of which is now in the federal Capitol at Washington. Mr. Jefferson employed the artist, and superintended in

Paris the completion of the work. Mr. Madison wrote the inscription which the statue bore:

"The General Assembly of Virginia have caused this statue to be erected as a monument of affection and gratitude to George Washington, who, uniting to the endowments of the hero the virtues of the patriot, and exerting both in establishing the liberties of his country, has rendered his name dear to his fellow-citizens, and given to the world an immortal example of true glory."

How simple, how true, how appropriate! worthy to go down, like the fame of its immortal subject, to the latest generation!

It was proposed by Houdon, on his return to France, to exchange that faithful inscription (which the sculptor could not appreciate), for the following: "Behold, reader, the form of George Washington. For his worth, ask history; that will tell it, when this stone shall have yielded to the decays of time. His country erects this monument. *Houdon makes it.*"

It may create wonder in an association like this, to hear that Mr. Jefferson himself, so profound a scholar, and so clear and strong a writer, could have assented to this proposed jejune and pompous description in lieu of the one which the statue bears. But the modesty of Mr. Madison, in replying to Mr. Jefferson's letter making this suggestion, is strongly characteristic of the man. "I am sensible of the inferiority in every respect of the original inscription to the proposed substitute, but I am apprehensive that no change can now be effected." (Manuscript letter to Mr. Jefferson, May 12, 1786, vol. i. of Rive's *Life of Madison*, 573).

I pause a moment briefly, to notice Mr. Madison's heroic defense of religious freedom in that session of the Virginia General Assembly. How strong his opposition to the general assessment for the support of the teachers of the

Christian religion can never be forgotten. Although that measure was sanctioned by Patrick Henry, John Marshall, and other distinguished men with whom Mr. Madison had almost constantly acted, he stood up bravely and manfully against the passage of the bill authorizing the tax reported in the session of 1784, and after its passage through several stages of its parliamentary progress, and had been ordered to be engrossed.

Its third reading was finally postponed to the next meeting of the legislature, which was to take place in the month of October of the same year. Copies of the bill, with the ayes and noes on the question of postponement, were ordered to be sent to every county, and the people were requested to signify their sense respecting its adoption to the General Assembly. Mr. Madison then put forth his celebrated memorial and remonstrance against the bill.

When the General Assembly met, the assessment was abandoned without a struggle. To Mr. Madison, of all the men of his age, posterity, says his gifted biographer, Mr. Rives, will award the meed of pre-eminence for long, earnest, persevering, and efficient exertions in defense of one of the most precious rights of human nature, the basis of every other, and the indispensable guarantee of civil and political liberty. His memorial and remonstrance, as a triumphant plea in that great cause, was never surpassed in power or eloquence by *any* its stirring interests had called forth; and as a monument of the genius, ability, and love of liberty of the author, which, if he had left no other behind him, would suffice to transmit his name with honor to future ages, and ought to render it forever dear to his country." (First volume of Rive's *Life of Madison*, pp. 633, 634.)

But the time was now rapidly approaching for a closer bond of Union between the states. The Articles of Confederation had failed of their end. Their utter inefficiency,

in the hour of danger and difficulty, to enable the government to raise revenue, or to enforce a compliance by the states with the requisitions of Congress upon them for the support of the government; the inundation of an irredeemable paper currency, and the utter want of credit which had threatened the success of the army, had deeply impressed Mr. Madison with the necessity of some fundamental change in the existing federal government of the states.

Virginia, by a resolution of the General Assembly in 1785, inviting commissioners from all the states to meet at Annapolis in 1786, to consider the trade of the United States, and to effect a uniform system of commercial regulations, as essential to their common interest and prosperity. Six states responded to this call. Mr. Madison and Colonel Hamilton, of New York, were among the leading spirits who assembled at Annapolis in September, 1786, in answer to that call. They were charged with the duty of preparing the report of the conference recommending the states to call a convention at Philadelphia on the second Monday in May, 1787, to be composed of commissioners to be appointed by them, who should consider the public condition of the colonies, and the expediency of certain alterations in the existing form of confederation, and to devise such a system of government, deemed by them adequate to the exigencies of the Union.

The convention was to report an act agreed on by them to legislatures of the states, and thence to the Congress of the Confederation.

Virginia led off in the approval of the proposed plan, and on December 4, 1786, the legislature elected George Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason, and George Wythe, seven of her most illustrious men, as commissioners to

represent that commonwealth in the proposed convention. Patrick Henry declined to act; and Governor Randolph, upon whom the power of filling vacancies had devolved, after tendering the position to Thomas Nelson and Richard Henry Lee, both of whom declined, appointed Dr. James McClurg, a distinguished physician in Richmond, and the father-in-law of John Wickham, one of the eminent counsel who defended Aaron Burr, and of whom Mr. Littleton Waller Tazewell, Virginia's great senator and jurist for so many years, is reported to have said, "John Wickham is the wisest man I ever knew, and the ablest lawyer, in my judgment, that ever addressed a court of last resort in the Old World or in the New."

Other states followed in selecting their most eminent and gifted men as commissioners to the convention.

Of all the statesmen America has produced, no one had so thoroughly studied the nature and extent of the governmental reforms demanded by the necessity of the times, and who so fully comprehended that form of constitutional government suited to the popular emergency, as James Madison. No statesman had perceived so early, or felt so deeply, the necessity of increased strength, as essential to the unity and harmony of a permanent union among the states. When the convention assembled in May, 1787, Mr. Madison was fully prepared for the august responsibilities which the discussion of its object was likely to invoke.

I shall not stop to follow the convention through the exciting debates which marked its labors. It sat with closed doors. Mr. Madison was one of its master spirits. He kept a copy of the debates. It was clearly his purpose, when he entered the convention, to keep a report of the whole proceedings of the body. He chose a position which best enabled him to do so. He was not absent a single day

from the sittings of the convention, and certainly no single member was more prominently connected with it than himself. Whether we look to his work in the convention before the Constitution was agreed to, or to his power and influence in the Virginia convention of 1778, called to pass upon the ratification of that instrument, where for days and weeks he met face to face in open debate Patrick Henry, George Mason, and James Monroe, and other great leaders in their unexampled effort for its defeat, he proved himself one of the leaders in both bodies.

A letter written in 1857 by a gentleman in Virginia, then in his ninetieth year, the only surviving witness of that memorial contest in the Virginia convention of '88, I cannot forbear reproducing. He says: "The impressions made by the powerful argument of Madison and the overwhelming argument of Henry, can never fade from my mind. I thought them almost supernatural. They seemed raised up by Providence, each in his way to produce great results: the one, by his grave, dignified, and irresistible arguments, to convince and enlighten mankind; the other, by his brilliant and enrapturing eloquence, to lead whithersoever he would, although there were other brilliant stars in the convention, such as Pendleton, Wythe, Mason. The discussion, after a few days, was narrowed down very much to Mr. Henry and Mr. Madison. They were both at all times quiet and interesting; but the convention yielded gradually to the convincing arguments of Madison, and adopted the Constitution. These two eminent men seemed ever deeply impressed with the magnitude of the issues before them, and each to labor with his whole strength and energy for the object he had in view—the one the adoption, the other the rejection, of the Constitution."

Mr. Madison has been called the Father of the Constitution, and Mr. Jefferson said he was justly entitled to that

distinction. I pass over his authorship in conjunction with Hamilton and Jay, of the *Federalist*, the only criticism upon the ability of which was that it concealed perhaps the defects of the Constitution.

The House of Representatives met for the first time under the Constitution of the United States in the city of New York, and elected its speaker on April 1, 1789. Mr. Madison was sent as a member to that body, and continued to represent his native state therein continuously until 1797. Here his career as a statesman became still more brilliant. The recorded votes and debates of those times show his power and efficiency in every important measure of the new Congress. The necessary organization of the government, the creation and arrangement of the judiciary and the revenue, engaged his clear and discriminating intellect. The legislative history of the government for the first years after the adoption of the Constitution is full of instruction and interest. It brings in strong contrasts the mischiefs intended to be remedied by the Constitution, and the provisions deemed by its founders essential to remedy these evils. My time does not permit me to dwell upon them.

In 1798, Mr. Madison was again returned from the county of Orange to the General Assembly of Virginia. Mr. John Adams was the President, and Mr. Jefferson Vice-President of the United States. The passage of the alien and sedition laws, and the claims of the administration for unlicensed power, alarmed Mr. Jefferson, Mr. Madison, and other prominent members of the Republican party. Such claims of power, if carried out, would, as they believed, lead to an extinction of the reserved rights of the states, and ultimately lead to a consolidated and centralized government, and which, if acquiesced in, would leave no limit to federal power. It was then that Virginia uttered her ringing protest against such claims, in the resolutions of '98, prepared

by Mr. Madison; and when rejected by Northern and Eastern states, was re-asserted in his memorable Report of 1799.

The cardinal political truths inserted in those memorable state resolves against the usurpation of the federal government of powers not clearly granted by the Constitution, or clearly essential to the execution of some power expressly delegated by that instrument, triumphed in the election of Mr. Jefferson to the presidency in 1801. For two successive terms of his administration Mr. Madison became his secretary of state.

Mr. Madison's correspondence, while secretary of state, with foreign ambassadors and our ministers at foreign courts, constituted a brilliant and important part of the history of Mr. Jefferson's administration, upon which I have no time to dwell. General Washington had tendered to Mr. Madison the position of secretary of state, at that time vacant. Mr. Madison had become so prominently identified with the Republican party that he felt, notwithstanding his respect for President Washington, that he could not harmoniously co-operate with the majority of his cabinet, and therefore declined it. He sympathized with Mr. Jefferson, not only in his general views of a strict construction of the powers conferred by the Constitution, but in his views of foreign policy, advocating with all his ability a retaliatory policy towards Great Britain. Indeed, when President Washington was about to retire from his second term, 1797, it was the wish of many that Mr. Madison should become the presidential candidate of the Republican party. Mr. Jefferson, in advocating it, thus wrote: "There is not another person in the United States with whom, being placed at the helm of our affairs, my mind would be so completely at rest for the future of our political bark." But Mr. Madison, with that self-subdued respect and modesty which ever marked his life, would not consent.

In 1797 he retired from Congress, not, however, until he had captured and won a dashing young widow, of remarkable accomplishments and powers of fascination, whom he had met in New York, the relict of Mr. Todd, a promising lawyer in Philadelphia. Mrs. Madison's maiden name was Dolly Payne. Some time after the death of Mr. Todd, this lovely and attractive woman went to New York during the session of Congress, was surrounded by admirers, and among them Mr. Madison. He won the prize, and was married in 1794, then forty-three years old.

Mr. Madison succeeded Mr. Jefferson as President for two successive terms. He assumed the responsibilities of his high office at a period of great domestic and foreign trouble. The bitter rancor between the Federal and Republican parties was then at its height. With a few exceptions, the great mass of the talent of New England was Federal.

The passage of the embargo in 1804, under Mr. Jefferson's administration; the acquisition of Louisiana; the rapidly growing population, power, and influence in the West; the slave representation in the South; and the supposed partiality of Mr. Jefferson and his secretary of state (Mr. Madison) for France, all intensified the Federal hate against Mr. Jefferson and his measures.

Despite the bitter opposition of the Federal party to Mr. Jefferson's administration, it had, with the exception of the injuries sustained by the country from the injustice of foreign powers, been more successful and prosperous, and more satisfactory to the people, than that of either of his predecessors.

Many of its acts, which the Hartford convention considered aggravated offenses, were by a majority of the people considered as its principal merit. But when Mr. Madison assumed the presidential office, the government

was embarrassed not only by domestic party bitterness, but by continued foreign wrongs. The act of non-intercourse against England was still in force. The right of search and impressment, insolently claimed and asserted by Great Britain, kindled into war, formally declared on June 18, 1812.

That contest was a stern trial of the patriotism, institutions, and government of the country. For years England, arrogant in her assumption to be mistress of the seas, had harrassed and destroyed our commerce, disregarded all rights of neutrality, searched our ships, impressed our sailors, and forced them to fight her battles. Despite New England's opposition to that measure, the *country approved it*.

Mr. Madison was re-elected by a large majority, and on March 4, 1813, was inaugurated for his second term. I have not time to enter into an examination of his administration, nor can I dwell on the incidents of the war. The arrogance of England was again rebuked, her army punished on the plains of Louisiana, and the freedom of the sea placed on a free basis. The Treaty of Ghent was signed in the year 1815, but not known until after the memorable victory of Jackson, on the 8th of January.

Mr. Madison's administration was marked by a calmness, dignity, forbearance, and statesmanship which distinguishes its success in American annals. On March 14, 1817, he surrendered his high responsibility to James Monroe, and retired to the quietude of Montpelier. He was again called by the people of Orange from his retirement, at the advanced age of seventy-eight years, to represent them in the convention of that state, in October, 1829, to revise and remodel the constitution of 1776. It was a fit compliment to the enlightened statesman by those who had known him longest and best, to represent them in the approaching state

convention, to revise a constitution formed fifty-one years before by Jefferson, Lee, Mason, and himself. That convention assembled in the city of Richmond, in October, 1829. Taken collectively, it was, in my judgment, the ablest and most intellectual body of one hundred men that ever assembled for deliberation in the domain of a free commonwealth. I fearlessly appeal to the reported debates of that body published by Ritchie & Cook in 1830, to sustain the fidelity of my statement. It was the privilege of my youth to have witnessed the organization of that august body, and to have been almost a daily attendant upon its debates for many weeks.

James Monroe was nominated by Madison as President of the convention, unanimously elected, and was conducted to the chair by Madison and John Marshall, and returned his thanks in a brief but appropriate address. In addition to two venerable ex-presidents, and the chief justice of the United States, there were Wm. B. Giles, Philip Pendleton Barbour, Chapman Johnson, Benjamin Watkins Leigh, Philip Dodridge, Abel P. Upshur, Briscoe G. Baldwin, Sam Taylor, John Randolph, Philip Norborne Nicholas, Robert Stanard, Alexander Campbell, Richard Morris, John Scott, John W. Green, Thomas R. Joynes, Hugh Blair Grigsby, with many other able representative men, all of whom have long since passed away.

Mr. Madison made several speeches in that body, which are accurately reported in the volume of its debates and proceedings. Mr. Madison never again appeared in public life. He succeeded Mr. Jefferson as rector of the University of Virginia, and gave to that honored institution the benefits of his wisdom, learning, and personal supervision.

Mr. Madison, in the latter years of his life, enjoyed the quietude of his own loved home, engaged in a voluminous correspondence and the bestowal of a boundless hospitality.

He had no children, but Mr. Payne Todd, the son of his wife by her first marriage, lived in his household, and was the recipient of his affectionate generosity.

Mr. Madison passed peacefully away, in the eighty-sixth year of his age, in the full enjoyment of his intellect, at Montpelier, on June 28, 1836, and sleeps by the side of his wife, father, and mother, and other kindred, in the ancestral cemetery of that attractive spot.

Mrs. Madison survived her husband thirteen years. She removed to Washington, where she was the object of great reverence and affection on the part of Congress, the President, the Supreme Court, and the countless host of strangers who annually are drawn to the federal Capitol. This charming and accomplished woman died in Washington. Her remains were removed to Virginia, and laid by the side of her husband.

I have thus attempted an outline of some of the labors incident in the life of this eminent Virginian. I have brought out nothing original in the history of this great and good man, and am indebted to his biographer, the late William C. Rives, for much that I have said. He was a statesman of unrivaled power; a master of every question presented to him for solution; highly accomplished as a scholar; a faultless logician, fluent without volubility; calm, but clear in statement, and as concise as he was clear; he wearied the patience of none, but commanded the attention of all, and so perspicuous as to reach the humblest of his hearers, while he was dealing with the highest problems of law, statesmanship, or diplomacy. He was a man of industry, of method, of patient investigation, of thoughtful study. His integrity was of the purest, and his honor of the loftiest standard. Naturally earnest, he had that dignified self-possession, the fruit of an innate consciousness that he was master of his subject, and believed himself

right in his convictions. He was systematic and thorough in his reading, and consequently he was always prepared. He was never excited, always dignified, and his mind so fully stored with knowledge, that he always commanded attention from all whom he addressed.

Mr. Madison was trained to be a statesman. He gathered from every book he read, thoughts deemed by him worthy of preservation, and made them subjects of profound reflection. He was singularly methodical. He had a place for everything, and everything had a place. He brought to the consideration of every subject submitted to him, the most laborious study, unbiassed by passion, prejudice, or party. But above all, Mr. Madison was a Christian in *theory* and in *practice*. He had been for many long years a communicant in the Protestant Episcopal Church. His moral courage never yielded to the braggart threats of selfish demagogues, and he stood dauntless and unmoved amid all excitements of a popular constituency, when they demanded of him any action inconsistent with his convictions.

In the early days of doubt and trial, when Mr. Madison, as a member of the Continental Congress, sought to obtain for Congress the power of regulating the currency, and getting rid of the load of worthless, irredeemable paper currency under which the country was groaning, and which threatened the loss of the cause of liberty itself, Virginia passed resolves setting out that the grant to Congress to regulate the currency was dangerous to the right of the states, and should not be granted. Mr. Madison, mortified by this legislative reproof of a scheme that he sincerely believed was essential to the success of the pending struggle for freedom, proudly said, "that Virginia was his mother, and that he was ready to listen and to obey her voice, unless it required him to yield up his convictions; and

that he could never do." He stood firm as a rock, and the succeeding legislature repealed the obnoxious resolves, and warmly approved by its action his financial views.

I am aware that Mr. Madison was the object of much obloquy among his political opponents, and sometimes, at perilous periods, of his friends. It has been charged that Mr. Madison's resolution in the Virginia legislature in 1798, growing out of the alien and sedition laws, and his report in 1799, alike by the terms and spirit of said papers, authorized any state, which thought a convention of its people believed that a particular law of Congress was a dangerous and palpable infraction of the Constitution, might interpose, and that the interposition specified was a constitutional right for such state to nullify the unconstitutional enactment or secede constitutionally from the Union.

When South Carolina sought, in 1832, to nullify a revenue enactment of Congress, Mr. Robert Y. Haine, in his celebrated debate with Mr. Webster, claimed that the Virginia resolutions of 1798 and Madison's report of 1799 countenanced and justified constitutional resistance, which Mr. Webster, in his reply, denied. Upon an appeal to Mr. Madison, who was then living, he denied that the construction sought to be put on these state papers *was the true one*.

He published a paper and wrote at the same time to many of his friends stating that the interposition contemplated by those memorable resolutions and report did not and never was intended to justify constitutional nullification or constitutional secession. Mr. Madison, in explanation, stated that there were many ways in which states could interpose against unconstitutional enactments of Congress. They might call a convention of states, and appeal to Congress to repeal the obnoxious law; or they might appeal to the Supreme Court, and invoke its judgment on the validity of

the law. If all remedies failed, and the burden was oppressive, then he acknowledged that there remained the ultimate violent remedy above the Constitution, and in defense of the Constitution, the inalienable right to freedom—the right of revolution. (Letter of Mr. Madison to N. P. Trist, *Writings of James Madison*, vol. iv. 761; letter of James Madison to James Robertson, dated March 27, 1832, vol. iv. of the *Writings of James Madison*, p. 160.)

For the utterance of these sentiments Mr. Madison has been the subject of much obloquy in former days, and was charged with a cowardly surrender of his former principles, by denying the constitutional right of resistance to the states, which he had advocated and avowed in 1798. How unjust all these accusations were, I will not stop to consider. James Madison was too pure, wise, and great a statesman ever to be mistaken as to what the true construction of the Constitution was. He believed that no unconstitutional law of Congress was binding upon the states. He believed that there were constitutional remedies; but he boldly denied that either the Constitution of the United States, or his construction of that instrument, insisted upon in his resolution and report in the Virginia legislature in 1798–99, tolerated a constitutional right on the part of a state to nullify a law or secede from the Union at pleasure. No man ever knew half so well what the Constitution meant as James Madison. He has been designated as the “Father of the Constitution.” Mr. Jefferson and Mr. Wythe said he was justly entitled to such paternity. No man felt or knew the necessity for a Constitution, and what power it intended to confer, and did confer, as James Madison. He was eminently and always a strict constructionist. He believed that while the object of the Constitution was to make the people of the United States one people, and to place them under one government, it was for certain specified purposes, *not*, as is now claimed, for all.

The purpose and object of the Constitution, Mr. Madison insisted, was to make and create a common government; to make war, peace, and treaties; to levy and collect money, regulate commerce; with correspondent executive and judicial authorities to be vested in the government of the United States. In other words, the Constitution created a union of the states, with one government over them, in respect to their relation to foreign states, and the aspect in which the nations were to regard them. But Mr. Madison never believed, as is now so glibly claimed by journals and certain political leaders who favor a strong government, that the Constitution created an amalgamation of the whole people under one government, and therefore was an extinction of the state sovereignties. Such a construction would have been an extinction, not a union, of the states. There was no necessity, therefore, for making the local institutions of the several states approach each other in any closer affinity. As government existed, each within its own territory, for all purposes of territorial supremacy and power—in a word, for all state purposes—it was no matter what variety the states should have in these respects, and it was left to their own discretion. And it was deemed by Madison and other founders of our governmental system, that its great beauty was found in the fact that the federal and state governments were kept thus distinct, state legislation left to the state authorities, and general legislation given to the general government.

These were Mr. Madison's views—no more, no less. His Virginia resolution and report in 1798–99 was to deny the exercise of an authorized federal power; to deny centralization by an absorption of the rights and sovereignty of the states; to defend the integrity of the Constitution, and preserve intact the reserved rights of the states; to maintain the Union by obeying the Constitution in keeping the fed-

eral and state governments each in their respective specified sphere as prescribed by that instrument.

I know how popular in these days it has become in certain quarters to ridicule the reserved rights of the states. I know, too, how centralization is seeking to erect upon the ruin of the states, by a denial of their rights, a central consolidated government upon the ruin of the duplicate form of government formed by our fathers. The enunciations of Mr. Madison should arouse friends of free government, irrespective of party, to a close alliance in the defense of the Constitution and its limitations.

A few words more and I am done. It was my good fortune, in my early youth, to have seen and known Mr. Madison. It may interest my brethren of this Association to hear a few personal reminiscences of this great statesman.

Mr. Madison was rather below medium stature, calm and dignified in his demeanor, with a vein of quiet humor, which relieved his apparent seriousness, and lighted up with an inexpressible charm, in his moments of relaxation, the grave aspects of his character.

His keen sense of the ridiculous, not less than his playful humor, was made manifest in several letters he wrote during his service in Congress, to Mr. Edmund Randolph and others, through whom Mr. Madison carried on his correspondence, with the treasurer of the commonwealth, for his per diem, then fixed at \$8 per day of the specie standard, but not promptly paid.

On August 27, 1782, Mr. Madison writes to his friend: "I cannot in any way make you more sensible of the importance of your kind remittances for me, than by informing you that I have for some time past been a pensioner on the favor of Hayn Solomon, a Jew broker."

Again, on September 24th, he writes: "Your credit with Mr. Cohen, which procured me fifty pounds, with \$200

transmitted by Mr. Ambler (the treasurer), have been of much service; but I am relapsing fast into distress. The case of my brothers is equally alarming."

Again: "The remittance to Colonel Bland is a source of hope to his brethren. I am ashamed to reiterate my wants so incessantly to you, but they begin to be so urgent, that it is impossible to suppress them. The kindness of our little friend on Front street, near the coffee-house, is an advance which will preserve me from extremities; but I never resort to it without great mortification, as he obstinately rejects all recompense. The price of money is so usurious, that he thinks it ought to be extorted from none but those who can use it at profitable speculation. To a necessitous delegate he gratuitously spares a supply of his private stock."

Mr. Madison was stern, yet attractive in the social circle; especially felicitous in his personal reminiscences of prominent men and interesting incidents in his personal life. I remember as though it were yesterday my last interview with this grand old man, in October, 1835. With his velvet cap upon his head, and lying on his lounge in his sitting-room at Montpelier, I went in to bid him good-bye, half an hour before the stage-coach arrived, which was to bear me from my native state in search of a new home in the far West. He took me by the hand, and inquired of me in what part of the West I proposed to locate myself. I told him I had not yet determined. He replied, "I think, my son, your determination is a wise one, to seek a new home in the great West. That great Western empire is ultimately to control the destinies of our country, and it is judicious in you to grow up around the people among whom you expect to love." And then added, "The Western people are patriotic, prosperous, and of noble physical development, and are possessed of strong native judgment.

Especially, is it true, that the Western women are intellectual, handsome, and practical. I must give you, in proof of this, an incident in my early and only visit to a Western state. I was called by business to Ohio, at an early day. We were travelling in a common mail-coach, in extremely cold weather, and, despite of blankets and straw, felt the effects of a freezing atmosphere. About sunrise we stopped at a neat, comfortable country inn, which we were told was the breakfast house. My companions and myself went in, and were met by a cozy and polite landlady, who welcomed us cordially, saying, 'Gentlemen, come in into the fire. You seem all to be very cold. Perhaps you would like to have a Samson before breakfast.' None of us comprehended what a Samson was; but as she connected it, in a remedial sense, with our frigid condition, I replied, 'Yes madam, we will be obliged to you for a Samson.' Quickly looking at us, she replied, 'Will you take your Samson with the hair on, or with the hair off?' Here was a poser, and we were all silent for a second. Remembering that Samson was strong with his hair on, and weak with his hair off, I replied, 'By all means, with the hair on.' In a short time she returned with three strong hot toddies, which we found grateful to our condition, and after an excellent breakfast, left on our travel."

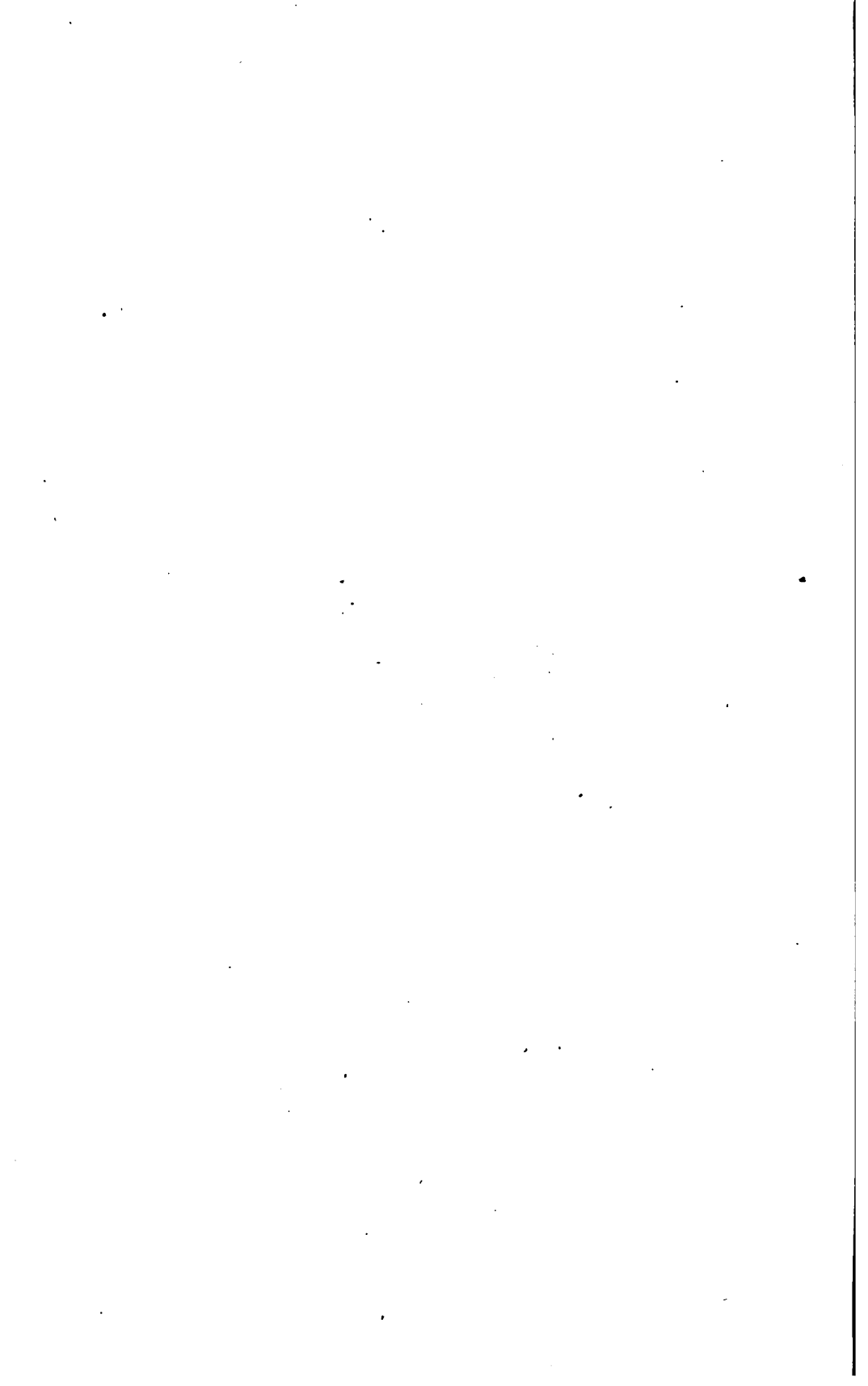
Mr. Madison was warm in his friendships; slow to form them, but when formed, never willing to give them up. No jealousy or envy ever interfered to disturb their harmony. Whenever broken, it was only when compelled to withdraw the confidence in which they rested. As a conversationalist and correspondent he had few superiors. He lived for more than half a century in times of wonderful excitement and danger. He saw the American Republic born amid blood, danger, and doubt. None did more for its formation; few were more active for its success and per-

petuation. His was a pure and chastened ambition. He was the recipient of the loftiest honor which his own commonwealth or the federal government could bestow. All yield to this great man the homage which virtue, talents, purity, and great public service demand. Chief Justice Marshall, towards the close of his life, being asked which of the various public speakers he had heard—and he had heard all the great orators, parliamentary and forensic, in America—he considered the most eloquent, replied: “Eloquence has been defined to be the art of persuasion. If it includes persuasion by convincing, Mr. Madison was the most eloquent man I ever heard.”

Mr. Jefferson, speaking of the peculiar and consummate powers displayed by Mr. Madison as a parliamentary debater, in the Federal Convention, in the Virginia Convention, and in the Congress of the United States, declared him the first of every assembly of which he was a member. (Vol. i. *Jefferson's Works*, 172.)

Mr. Gallatin, who served with him in the House of Representatives of the United States in the important session of 1795–96 and 1796–97, recalling, in the evening of his days, those who had been and were the most eminent in the deliberative assemblies of the country, pronounced Mr. Madison to be, in his judgment, the ablest man that ever sat in the American Congress.

It is my solemn conviction that history will accord to James Madison the highest supremacy in statesmanship which this country has produced.



REPORT

Of the Committee of the Law Association of Philadelphia, appointed December 5, 1882, "To consider the subject of the Delays to Suitors in the Supreme Court of the United States, and the various plans for the Relief of that Court which have been suggested."

To the Law Association of Philadelphia :

Your committee, after many meetings and much discussion, have decided to suggest certain legislation, in support of which they beg leave to offer the following reasons:

Under existing law, every case decided by the Circuit or District Court of the United States, in which the amount involved, exclusive of costs, equals or exceeds the sum of \$5,000, may be taken to the Supreme Court; and patent and copyright cases, cases upon the construction of the civil rights bills, and cases in which the judges of the lower courts will certify that they differ in opinion, and that the point involved is of sufficient importance to require the decision of the Supreme Court, may be taken up irrespective of the amount involved; to this court are also brought all appeals and writs of error from the decisions of the Supreme Court of the District of Columbia, in cases where the amount involved is \$1,000, those from the supreme courts of the territories where the amount involved is \$1,000 or more, except Washington Territory, where the limit is \$2,000, and all appeals from the Court of Claims; in addition to these cases are the appeals from the supreme courts of all the states, irrespective of amount, in certain cases involving the con-

struction of the Constitution, or a law or treaty of the United States; besides all this there is an occasional exercise of original jurisdiction.

It should also be observed that in all cases between \$500 and \$5,000 the decisions of the circuit courts are final.

The mischief resulting from this state of the law is twofold.

1. The Supreme Court has on its calendar at the beginning of each session not less than twelve hundred cases, out of which it can annually hear and decide not more, on an average, than three hundred and sixty; so that since the cases take their position on the calendar in the order in which they go up, every case has about twelve hundred cases ahead of it; and, with an average of three hundred and sixty removed annually, more than three years must elapse before it can be reached for argument. The result is to the suitors, in many cases, a practical denial of justice, and to the country frequently a continually annoying uncertainty and consequent increase of litigation on many points of United States constitutional or statutory law.

2. The second evil resulting from the present state of the law is the inability on the part of suitors in the district and circuit courts, whose cases are under \$5,000, to obtain any real review of the decision of the judge who tries or hears the cause. The trial in the district court is held by the district judge; and if appealable to the circuit court, is nearly always heard before the same judge sitting with the circuit judge, whose opinion is prone to coincide with that of his brother judge, and the latter rarely has the counteracting influence of the opinion of the circuit justice to sustain him in reversing; while in the review of the circuit court decisions, the circuit and district judges sitting together are still less likely to overturn each other's rulings.

To meet these existing evils, two bills or sets of bills were presented for our consideration. We will briefly state what we believe to be the merits and defects of each of the schemes, and show how we have endeavored to combine the merits while omitting the defects of both.

The Davis bill proposes in brief:

1. The appointment of two additional circuit judges in each of the nine judicial circuits.

2. The three circuit judges, with the associate justice of the Supreme Court, allotted to a given circuit, and two of the district judges to be designated by the order of the court at each term, shall constitute a court of appeals for each circuit. This court shall have appellate jurisdiction from the circuit and district courts within the circuit:

(a) Whenever an appeal or writ of error now lies from a final judgment or decree of said courts.

(b) Whenever the amount claimed, or value of the property in controversy exceeds \$500.

(c) Whenever a circuit or district judge shall certify that the action involves a question of general importance.

(d) Whenever, within thirty days, an appeal is taken from an interlocutory decree of the circuit or district court, granting or refusing an injunction, provided an appeal would lie on final decree.

(e) Whenever, within ninety days of the judgment, a writ of error is allowed by a judge of the court of appeals in any criminal case.

The decision of this court of appeals will be final on all questions of fact, and on questions of law, except:

1. Where the value or sum of \$10,000 is in controversy.

2. Where a question upon the construction of the Constitution, a law of the United States, or the validity of a treaty is involved.

3. Where the court certifies that the case involves a legal question of sufficient importance to require the final decision of the Supreme Court.

In the two last-mentioned cases, the specific question only shall be certified to, and finally decided by the Supreme Court; and

4. In patent and copyright cases without regard to amount; *Provided*, That the court shall certify that the question is of sufficient importance to require the decision of the Supreme Court, which may then review both the law and facts.

This bill unquestionably possesses certain decided merits.

First. By the high limit of appeal it effectually cuts off from the Supreme Court a very large proportion of the cases which now reach it, and so relieves it of possibly as much as two-thirds of all its labor.

Second. It provides a competent review, not only for those cases which now reach the Supreme Court, and are thus cut off, but for all of those civil cases between \$500 and \$5,000, and for criminal cases which have now no competent review, and this within easy reach of every suitor.

Third. It secures a review of the judgments of the courts of appeals in all cases over \$10,000, and cases involving the construction of the Constitution, or the construction or validity of a treaty or a law of the United States, and all other cases irrespective of amount, provided the court shall certify their importance; and

Fourth. It is a scheme which, as regards the courts of appeal, admits of indefinite expansion, should it in the future be found necessary.

The defects of the scheme, however, are in our opinion serious.

First. It divides the country into sections, co-terminous with the boundaries of the circuits, and thus creates sources of local influence which are neither the separate states nor the general government, the only two bases of political division recognized in our Constitution and laws.

Second. It creates nine courts, each of which is for the majority of cases before it a final court of appeal, but without the dignity of such a court, and liable, especially in the common law cases, to be affected by local prejudice or influence. The chances for possible increase of litigation, with such conflicting decisions, are obvious.

Third. It will almost double the number of reports of cases other than Supreme Court cases.

The two bills introduced by Mr. Manning, H. R., bills Nos. 865 and 5,939, contemplate the following changes:

Bill No. 865 provides that—

1. The Supreme Court as at present constituted shall be divided at the beginning of each session into three sections, one of them to be presided over by the chief justice, the other two by two assistant chief justices, to be designated by the President.

2. That to each of these sections shall be assigned by the chief justice and the assistant chief justices an equal number of the cases ready for argument, but in such manner that as nearly as may be all equity cases (which includes patent and copyright cases) shall go to one division, common law cases to another, and admiralty, revenue, and all other cases to the third.

3. That each division shall sit by itself to hear arguments, and if all or two-thirds of the justices assigned to a division concur in a judgment, it shall be reported to the full bench, and no review shall of right accrue to either party; but the court may order a case to be heard before them in general session.

4. The whole court shall sit at least once a month, and before it shall be argued all cases involving the Construction of the Constitution or a treaty of the United States, all writs of error from the supreme courts of the states, and such other cases as they may deem it necessary to hear in full session.

5. At the sessions of the whole court, the judgments of the several divisions shall be delivered and entered upon the minutes of the court as the judgments of the Supreme Court.

Bill No. 5,939 provides that—

1. No case shall be originally brought or removed to a circuit court when the sole ground of its jurisdiction is the citizenship of the parties, unless the amount in controversy shall exceed \$10,000.

2. That no cause shall be removed from a state to a circuit court except by a defendant upon the allowance of the circuit court, after argument before it upon a petition for removal alleging prejudice or undue influence in the circuit court.

3. Whenever the amount in controversy in a circuit court is less than \$10,000 the case may, upon petition of either party, be appealed to the highest appellate court of the state for trial on matters of law, which may review and correct the judgment of the circuit court; but a writ of error or appeal from the judgment of the state court may be taken to the Supreme Court of the United States.

The merits of these bills are recognized as follows :

First. The idea of *one* Supreme Court is preserved, with no chance for conflict of decision between courts of final appeal.

Second. The limit of the right of appeal to the Supreme Court remains \$5,000.

Third. A large proportion of the cases which now go to the Supreme Court is effectually cut off, by cutting off the source of supply in the jurisdiction of the circuit courts.

The defects of the system are—

First. That by being thus cut up into sections, the judgments of the Supreme Court will lack the authority of the whole court, and the court itself will lose its dignity as the Supreme Tribunal of the nation; moreover, the judges of the sections other than that before which the argument takes place, will be indifferent to its decisions, and the judgments may thus be unsatisfactory.

Second. If the judges of the Supreme Court conscientiously examine each case, then but very little time is really gained to them, except that secured by cutting off the jurisdiction of the circuit courts.

Third. This scheme provides no review for cases under \$5,000 in amount, which is so greatly needed.

Fourth. There is a possible constitutional objection to the system of sections in the Supreme Court; and—

Fifth. There is objection to fixing the right of being heard in the circuit court, if it should exist at all, at so high a limit as \$10,000; while the system of appealing from the circuit courts to the supreme courts of the states is entirely at variance with the existing theories of our government.

Your committee believe that they have thus fairly stated the two schemes proposed, and the merits and defects of each, as to which the opinion of the bar, as evinced at the meeting of the American Bar Association, is so evenly divided: We have sought to find a scheme by which, if possible, the merits of both of the schemes already proposed might be combined, and the defects of each eliminated; that they have wholly attained this result the committee cannot pretend, but that they have approximately done so, they venture to hope may be demonstrated.

There were three objects to be attained :

1. To cut off the source of supply for appeal cases.
2. To make some logical division of labor for the remaining cases; and—
3. Provide a means of competent review for those cases in the circuit courts under \$5,000, for which no appeal or writ of error now lies.

In order to the consideration of the first two questions, the committee made an examination of the last seven volumes of the United States Supreme Court Reports (vols. 99 to 105 inclusive), and tabulated the various cases in such manner as would best show, so far as it could be determined, the ground upon which each case was brought into that court. The result was as follows. The whole number of cases in the seven volumes is seven hundred and thirty-nine, divided as follows:

Cases from territorial courts,	30
“ “ the Court of Claims,	43
“ “ state courts,	90
“ “ Supreme Court of the District of Columbia,	38
“ by or against national banks,	35
Patent and copyright cases,	49
Land grant cases,	10
Admiralty cases,	29
Tax cases and cases against United States officers,	43
Bankruptcy cases,	20
Cases in which the United States was a party,	31
Cases involving the construction of laws or treaties of the United States,	8
Cases in which the jurisdiction of the circuit court was acquired by citizenship only,	166
Cases in which the ground of jurisdiction did not appear, but presumably it was almost without exception citizenship,	147
	<hr/> 739

Thus it will be seen that the cases in which it is clear that the sole ground of jurisdiction was the citizenship of the parties were 166; allowing a very liberal proportion of the cases marked as those “in which the ground of jurisdiction did not appear.” say 47, as being taken to the Supreme Court on some other ground than that of the citizenship of the parties, there are left 100, which, added to the 166 known to depend on citizenship only, gives us 266 cases out of 739 (an average of 34.5 per cent.), in which the sole ground upon which the Supreme Court is asked to hear them is the citizenship of the parties, while the point involved has nothing to do with United States law of any kind, but depends simply upon the common law of the land, which the state courts are competent to decide, and from whose decision, in other similar cases, no further appeal will lie. The number of citizenship cases which appear affirmatively to have been removed from state courts is only 47, but it is plain to those familiar with the practice of the

courts that the actual proportion must be largely in excess, and that it is being continually increased as the effect of the Removal Act of 1875 becomes more plainly visible. It was thought that here there might be a possible pruning of cases. The law now permits either a plaintiff or defendant to remove a cause solely on the ground of citizenship, but there seems to be no reason why the plaintiff—one who has deliberately selected the state court as his forum—should subsequently be permitted to transfer his case to the United States court. Neither is any good reason apparent why a citizen of the state in whose court the suit is brought, even though he be the defendant, should remove his cause to the United States court, in view of the fact that the sole theoretical ground for doing so is the supposed prejudice existing in the state court in favor of its own citizens. Moreover, the theory of prejudice in the majority of cases is not borne out by the facts, for there is rarely any prejudice on the part of the state court, and on the part of its jury no greater prejudice exists than would be felt by the jury of a federal court, who are always citizens of the same state as that in which the suit is brought; *i. e.*, the state of the court in which the suit originates. In view of this, we have drawn a bill limiting the right of removal, when the sole ground of removal is the citizenship of the parties (except in land cases), to a defendant in the controversy, being also an alien, or a citizen of a state other than that in which the suit is brought; and in order that even such a removal may not be purely capricious, we require an affidavit to be filed stating that such defendant believes that he will be prejudiced by a trial in the state court. This legislation we hope will cut off an appreciable amount of the present business of the circuit courts, and hence that of the Supreme Court, but more particularly will prevent the rapid increase in this direction, which is now inevitable.

The second object to be attained was the removal from the consideration of the Supreme Court of all or any cases which could properly be deflected from it, while at the same time securing a fair and satisfactory appeal. The table of cases showed at once that at least one-third of the cases in the Supreme Court—those depending on citizenship only—were really occupying its time with the consideration of questions which had nothing whatever to do with the law of nations nor the Constitution and laws of the United States, for the settlement of which the Supreme Court of the United States was established. They involve questions of common law, which it has always been deemed that the courts of highest resort in the various states are competent to decide, and they are brought to the Supreme Court simply because there is no other court to which an appeal would lie. Why should not a court of appeal, of equal dignity with the supreme courts of the states, be equally competent to hear and decide such questions? Such a court would secure to a defendant who fears prejudice, all that he could obtain in the courts of his own state, viz., a fair trial by an impartial tribunal, and a review by a court of great dignity, whose jurisdiction is solely an appellate one. There was a practical objection to establishing one new court, that, if it were to hold its sessions in Washington, there would be the loss of one conspicuous merit of the Davis bill—the convenience to suitors. A single court of appeals sitting in Washington seemed to be generally repudiated in the Saratoga discussion. But there seems to be no reason why such a court might not hold its sessions once a year in each of the four great divisions of the Union; and if desirable to increase the number of places hereafter, even this could be done; but wherever it should sit, its decisions would be those of a single undivided court, without local prejudice, for it would recognize no locality save the whole

country. It would not be desirable, however, that such a court should finally pass upon any questions of federal law; and wherever they might arise, the Supreme Court should settle them. Such a court might be a court of *final* appeal for those cases brought before it, but for the constitutional objection that there shall be "one Supreme Court;" and there must be a right of appeal, but the money limit may be fixed so high as practically to secure the advantage sought, while still keeping within the constitutional provision. A bill formulating these ideas is submitted, with the hope that it may be found to embody the merits of the courts of appeal suggested by Mr. Davis, with the uniformity of decision preserved by Mr. Manning.

There remained one important and great benefit secured by the Davis bill not provided for by either of the foregoing suggestions: the review of district and circuit court judgments in cases under \$5,000 in amount. This we have sought to secure by the addition of one circuit judge to each circuit, who can share the labors of the present judge, while time will be secured to both of them to sit with the justice of the Supreme Court, or the judge of a neighboring circuit court, and the district judge as the circuit court *in banc*, in which there will be always at least two new minds to consider the rulings of a single judge.

RICHARD VAUX,
WM. HENRY RAWLE,
HENRY REED,
RICHARD M. CADWALADER,
J. EDWARD CARPENTER,
FRANK P. PRICHARD,
N. DUBOIS MILLER,

Committee.

A Bill to Establish a Court of Appeals, and to provide additional Circuit Court Judges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That there shall be established a court to be called the Court of Appeals of the United States, which shall have appellate jurisdiction, subject to the provisions of this act, of all cases arising in the several circuit courts, where the sole ground of jurisdiction of the said circuit court was that the controversy was one between citizens of different states, or between citizens of the same state, claiming lands under grants of different states, or between a citizen or citizens of a state and a corporation organized under the laws of the United States, or between citizens of a state and foreign states, citizens or subjects. The said Court of Appeals shall consist of one chief justice and six associate justices, to be appointed by the President of the United States, any five of whom shall constitute a quorum. The chief justice, or in his absence the justice present who is senior in office shall preside; between justices whose commissions bear the same date, the precedence shall be determined by lot. In the absence of a quorum, the justice or justices present shall adjourn the court from day to day or without day.

SECTION 2. That such Court of Appeals shall be a Court of Record, shall prescribe the form and device of its seal, and appoint a clerk, removable at its pleasure, to whom the clerks of the several circuit courts shall act as deputies, and each deputy so appointed shall, in case of the death or resignation of the clerk, act as clerk for his own circuit until another clerk shall be appointed. The clerk shall take the oath, and give the bond with sureties prescribed

by law for clerks of district courts. Process shall run in the name of the Court of Appeals of the United States, and shall bear test of the chief justice thereof, or when that office is vacant, of the associate justice next in precedence, and shall be under the seal of the court, and signed by the clerk thereof, or one of his deputies.

SECTION 3. That the marshal of the district in which the Court of Appeals is held, shall attend its sittings and execute its process to him directed, and under the direction of the Attorney General of the United States, and with his approval, provide such rooms as may be necessary, and pay all incidental expenses of said court, including crier, bailiffs, and messengers; *Provided*, That no building or room shall be rented or leased for the use of said court in any city where a building of the United States is situated which can be conveniently used for the purpose; *And provided further*, That no lease of any building or rooms for this purpose shall be valid until approved by the Attorney General; and any such lease shall be subject to be terminated at any time by the Attorney General or by Congress; *And provided further*, That the marshal, crier, bailiffs, and messengers shall be allowed the same compensation for their services respectively as are now allowed for similar services in the circuits in which they are respectively employed, and shall have the like remedies for collecting the same, but shall not receive pay for attending more than one court the same day; nor shall the maximum compensation of the marshal, including all his fees and emoluments, exceed that allowed by existing laws. The salary of the clerk shall be \$6,000 per annum.

SECTION 4. That the appellate jurisdiction of said court shall be exercised on writ of error or appeal, as the nature

of the case may require. No such appeal shall be taken or writ of error sued out except within one year after the entry of the order, decree, or judgment sought to be reviewed; *Provided*, That all citations, writs of error, appeal bonds, or other processes or papers, which under the existing laws of the United States are necessary to be signed or approved by a justice of the Supreme Court or a judge of a circuit court, in order to make effectual an appeal from the circuit court to the Supreme Court of the United States, may, in all writs of error or appeal taken to the Court of Appeals of the United States under this act, be signed or approved by the judge of the circuit court or the justice of the Supreme court assigned thereto, or by a justice of the Court of Appeals. Upon such writ of error or appeal the court shall review such order, judgment, or decree, and may affirm, modify, or reverse the same, or may make such order, or may render such judgment or such decree as the circuit court should have made or rendered, or may order a new trial or other proceedings to be had in that court. Where, upon a hearing in equity in a circuit court, an injunction shall be granted or continued by an interlocutory order or decree, in a cause in which an appeal from a final decree could be taken under the provisions of this act to the Court of Appeals, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction to the Court of Appeals, provided the same is taken within thirty days from the entry of such order or decree. The proceedings in other respects in the court below shall not be stayed during the pendency of such appeal. Upon such appeal, the Court of Appeals may affirm, modify, or reverse such order or decree, and shall direct such proceedings to be had in the court below as the justice of the case may require. The said court shall have power to issue writs of error, mandamus, *scire facias*, *habeas corpus*, and all

other writs which may be necessary or proper to the exercise of its jurisdiction, and agreeable to the principles and usages of law and the practice of the circuit courts of the United States. All provisions of law now in force, prescribing the cases in which appeals may be taken or writs of error sued out for the review by the Supreme Court of the final judgment or decree of the circuit court shall, except as modified by this act, apply to an appeal taken or a writ of error sued out under this section; and the manner of taking such appeal or suing out such writ of error, or of staying proceedings in the inferior court, shall be governed by the laws now in force touching appeals from the circuit court to the Supreme Court, and writs of error from the Supreme Court to the circuit court, subject to the provisions of this section as to the time of taking such appeal or suing out such writ of error. The Court of Appeals may also establish such rules, not inconsistent with law or the rules established by the Supreme Court, as it may deem necessary for the practice of said court.

SECTION 5. That all appeals and writs of error taken, allowed, or sued out upon or from any judgments or decrees of the circuit court, after the day of , 18 , shall be taken, allowed, or sued out under and according to the provisions of this act, so far as it modifies the existing law, and not otherwise.

SECTION 6. That a session of the said Court of Appeals shall be held once in each year in each of the following cities, viz.: in the city of New York, in the city of New Orleans, in the city of Chicago, and in the city of San Francisco. There shall be in each year four terms, to which all writs of error and appeals shall be returnable, viz.: the first Mondays of January, April, July, and October. The court

shall apportion the judicial districts of the United States into four divisions, and may from time to time, in their discretion, change and transfer any district from one division to another. Appeals and writs of error taken in cases decided in districts composing the first division shall be heard at New York; those in cases decided in the second division, at Chicago; those in cases decided in the third division, at New Orleans; and those in cases decided in the fourth division, at San Francisco. The Court of Appeals shall, on the day of 188 , meet in the city of New York, and organize and make such rules for the holding of sessions for hearing cases as shall be most expedient for the dispatch of business and the convenience of suitors.

SECTION 7. That the decision of the Court of Appeals upon questions of fact, shall in all cases be final and conclusive, except as otherwise provided in this section; the facts to be found, if specially requested by either party, but a review upon the law may be had upon writ of error, or appeal in the manner now provided by law to the Supreme Court of the United States, from every final judgment or decree of the Court of Appeals, where the matter in controversy exceeds the sum or value of \$20,000, exclusive of costs, or where the adjudication involves a question arising in the progress of the cause upon the construction of the Constitution, or the construction or validity of a treaty or a law of the United States; but in the last mentioned case the Court of Appeals shall state the question arising upon the construction of the Constitution, or the construction or the validity of such treaty or law, and such question only shall be certified to and finally decided by the Supreme Court; and its decision thereon shall be enforced in like manner as is now provided by law in cases where a question is certified to the Supreme Court, upon which the judges of a

circuit court are divided in opinion. Such writ of error or appeal shall be sued out or taken within one year after the entry of judgment, or the decree sought to be reviewed. The Supreme Court may affirm, modify, or reverse the judgment or decree brought before it for review, or may direct a judgment or decree to be rendered, or such further proceedings to be had as the justice of the case may require. The judgment or decree shall be remitted to the proper circuit court to be enforced according to law. If, within a year after the entry of the judgment or the decree sought to be reversed, any party shall die, the personal representative or heir, as the case may require, may, within one year next after the proof of the will or appointment of the administrator, or within one year next after the death of the ancestor, in the case of an heir, sue out or be made a party to a writ of error, or take an appeal, or be made a party thereto, without reviving the judgment or decree in the court in which the same was entered.

SECTION 8. That in all cases not involving a question upon the construction of the Constitution of the United States, or the construction or validity of a treaty or a law of the United States, a writ of error or appeal may be taken from the Supreme Court of a territory to the Court of Appeals of the United States and to that court only. Appeals taken and writs of error sued out from a decree or a judgment of the Supreme Court of any territory to the Court of Appeals of the United States shall be heard in such divisions as shall be previously designated by general order of the said Court of Appeals.

SECTION 9. That any defendant in a suit at law or equity in any court of the United States may plead or except to the jurisdiction of the court at the same time that he pleads or

answers to the merits, and if said plea or exception be overruled or decided against him, he shall nevertheless be entitled to defend on the merits as if said plea had not been filed or said exception taken.

SECTION 10. That there shall be appointed for the said Court of Appeals, by the President of the United States, by and with the advice and consent of the Senate, one chief justice and six associate justices, who shall have the powers and jurisdiction and shall perform the duties provided for them in this act. The chief justice shall receive a salary of \$8,500 per annum, and each of the justices a salary of \$8,000 per annum. They shall hold office during life or good behavior, and on resignation shall be entitled to their salaries under the conditions provided in Section 714 of the Revised Statutes.

SECTION 11. That any judge who, in pursuance of the provisions of this act, shall attend the Court of Appeals held at any place other than where he resides, shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held, his reasonable expenses for travel and attendance, not to exceed ten dollars per day, and such payment shall be allowed the marshal in the settlement of his accounts with the United States.

SECTION 12. That all writs of error and appeals now pending in the Supreme Court of the United States, which, had this act been in force at the time when such writs of error or appeals were taken, would have been taken to the Court of Appeals and not to the Supreme Court, shall, on the application of counsel for either side, or when reached for hearing on the docket of the Supreme Court, be transferred from the Supreme Court to the Court of Appeals, and shall

be assigned for hearing in whichever of the four divisions shall be designated by the Court of Appeals in accordance with its rules, and shall take their position on the calendar for argument in the order in which they shall be removed to the Court of Appeals.

SECTION 13. That there shall be appointed for each judicial circuit of the United States, by the President of the United States, by and with the advice and consent of the Senate, one additional circuit judge, who shall have the same powers and jurisdiction, and shall perform the same duties, and be entitled to the same compensation as the circuit judge appointed under existing laws.

SECTION 14. That where a final decree or judgment is sought, either upon hearing in equity or upon the adjudication of an issue of law, as in a demurrer or the like, and in every case of writ of error, appeal, exception, motion, rule, or other proceeding at law or in equity designed, as allowed by existing law, to obtain a review of any decree, judgment, finding, or ruling of any judge of the circuit or of the district court, or of any master, auditor, referee, arbitrator, commissioner, or other person exercising judicial or *quasi* judicial functions, the circuit court of every judicial circuit of the United States shall be composed of the justice of the Supreme Court of the United States assigned to such circuit, the two circuit judges thereof, and the district judge in whose district such circuit court may be holding its session. The quorum of such circuit court shall consist of at least three members thereof.

SECTION 15. That when, because of disability, or for any other reason, any one or more of the judges above described shall fail to attend any sitting of such circuit court, his or

their places shall be supplied by one or more circuit judges belonging to the circuits adjacent to the circuit of such circuit court, who shall in every year be designated to the number of four or more for this purpose, and in a certain order, by the Supreme Court of the United States. It shall be the duty of such judge or judges to attend such circuit court upon being notified by the other judges of the latter court of the necessity of their presence to constitute the quorum required by this act.

SECTION 16. That in no case, except rules for new trials or motions for such rules, and rules to take off non-suits, shall the judge, from or to whose decision or ruling an appeal, writ of error, exception, or other proceeding, designed to obtain a review thereof, has been taken, participate in the decision upon such appeal, or other like proceeding.

SECTION 17. That all acts and parts of acts inconsistent herewith are hereby repealed.

A Bill to amend the Act of Congress of March 3, 1875, entitled "An Act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of causes from state courts and for other purposes," and to repeal sections 639 and 640 of the Revised Statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the second section of the act of Congress, entitled "An Act to determine the jurisdiction of circuit courts of the United

States, and to regulate the removal of causes from state courts, and for other purposes," approved March 3, 1875, be and the same is hereby amended so that the same shall read as follows:

"SECTION 2. That in any suit of a civil nature, at law or in equity, now pending or hereafter brought in any state court, when the matter in dispute exceeds, exclusive of costs, the sum or value of \$500, in which there shall be a controversy between citizens of different states, or a controversy between citizens of the same state, claiming lands under grants of different states; or a controversy between a citizen or citizens of a state and a corporation organized under the laws of the United States; or a controversy between citizens of a state and foreign states, citizens or subjects, the defendant or any one of the defendants in such controversy being an alien or a citizen of another state than that in which the suit is brought, may remove said suit into the Circuit Court of the United States for the proper district; and where the controversy is between citizens of the same state claiming lands under grants of different states, either party may remove said suit into the Circuit Court of the United States for the proper district. And when, in any suit mentioned in this section, there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the Circuit Court of the United States for the proper district; *Provided*, That before or at the time of filing the petition for removal in any of the above cases, the petitioner makes and files in said state court an affidavit stating that he has reason to believe, and does believe, that from prejudice or local influence he will not be able to obtain justice in such state court."

Provided, that nothing herein contained shall affect any suit already removed to a Circuit Court of the United States.

SECTION 3. That sections 639 and 640 of the Revised Statutes of the United States be, and the same are hereby repealed:

OBITUARIES.

ILLINOIS.

THOMAS HOYNE.

Thomas Hoyne was born in New York City, February 11, 1817. He was a son of Irish parents who had been compelled to emigrate in 1815, in consequence of trouble in which his father had become involved with the English government. His father died in 1829, and his mother within the following year. He was the eldest of seven children. Thus left poor and unfriended, he became an apprentice to a manufacturer of fancy goods, and worked in that capacity for four years. In the meantime he pursued his studies, and in 1835 became a clerk in a large jobbing house. He soon after became a law student in the office of Hon. John Brinkerhoff. In the summer of 1837 he removed to Chicago, at the instance of his friend George Manierre, who was then clerk of the circuit court of which he afterwards became judge. In his early life Mr. Hoyne took an active part in literary matters. Soon after his removal to Chicago he taught in one of the public schools. He completed his legal studies in the office of the Hon. John Y. Scammon, and was admitted to practice in the fall of 1839. In 1842 he removed to Galena, Illinois, where he pursued the practice of the law for two years, after which he returned to Chicago, where he continued to reside until the time of his death. In 1847 he was elected Probate

Judge of Cook County. At the expiration of his term of office he formed a partnership with Mark Skinner, which continued until the former was elected Circuit Judge in 1851.

Mr. Hoyne was a Democrat in politics, and took an active interest in political affairs. It may be truly said of him that he was a thoroughly honest, bold, and uncompromising politician. He would resist what he believed to be a wrong in his own party, as quickly and as vigorously as he would assail what he regarded as an error in the opposing organization. He advocated the Mexican War, became a Free-soiler in 1848, and supported Van Buren and Adams as a presidential elector. Mr. Hoyne was appointed United States District Attorney for Illinois by President Pierce in 1853. He was a warm supporter of Judge Douglas until 1856, when he opposed the great Illinois senator, and supported the policy of President Buchanan. In 1859, Mr. Hoyne was made Marshal for the Northern District of Illinois, and in 1860 superintended the taking of the United States census for the Northern District of Illinois.

Mr. Hoyne was one of the founders of the University of Chicago in 1857, and during its whole existence to the time of his death rendered in its behalf a most important and conspicuous service. The Hoyne Professorship of International and Constitutional Law was created in his honor, and he received from the University the degree of Doctor of Laws. He also made liberal pecuniary contributions to the institution, and the success of the Chicago Astronomical Society connected with it was largely due to his personal efforts. He also took a leading part in establishing the Chicago Free Public Library, and was also one of the originators of the Chicago Bar Association.

In all public positions, and throughout his professional and his private life, Thomas Hoyne was distinguished by

independence and courage, vigorous ability, and zealous devotion to whatever cause he espoused, a keen sense of honor, and an aggressive integrity. In his profession of the law he held for many years a prominent and honorable position. His business qualifications were exceptionally good, and he managed his own affairs and the interests committed to his charge with marked success.

He was married in 1840 to Leonora M. Temple, daughter of the late John T. Temple, M. D. Seven children blessed this union, of whom the eldest, Temple S., is a professor in Hahnemann Medical College, and the second, Thomas M., a member of his father's firm. Thomas Hoyne was killed in a railroad accident at Carlton, New York, July 27, 1883.

The limits of this sketch forbid further detail. Were it not so, many pages might easily be filled with interesting incidents and characteristics calculated to increase our respect for the man and the profession to which his life was chiefly devoted.

MARYLAND.

LAWRENCE L. CONRAD.

Lawrence Lewis Conrad, of Baltimore, was born in Pass Christian, Mississippi, and died in Baltimore County, August 7, 1883, in the forty-third year of his age. He was the son of the late Charles M. Conrad, of Louisiana, Secretary of War under President Fillmore, and his mother was a daughter of Lawrence Lewis and grand-niece of General George Washington. The deceased was a graduate of the universities of Virginia and Louisiana, from which latter institution he received his degree of LL.B. At the beginning of the late war he was in service in Virginia, but

he was soon ordered to Louisiana, where he was assigned to the staff of Lieut. General Buckner, with whom he continued until the war ended. He then began the practice of his profession in New Orleans, but in 1868 he moved to Baltimore, where he soon attained an enviable position at the bar. He was a man of great personal attractions, of high professional and literary attainments, of indomitable courage and perseverance, and commanded and deserved the entire confidence of a large and rapidly increasing circle of clients and friends. He never held any political office, but took an active interest and part in every measure for the good of the city and state where he had made his home.

M I C H I G A N .

DAVID DARWIN HUGHES.

D. Darwin Hughes was born in Camillus, N. Y., February 1, 1823, and died at Grand Rapids, Michigan, July 12, 1883. He was of Welsh descent, the American ancestor having settled at East Haven, Conn., in 1748. His father, Henry Hughes, removed with his family to Eaton County, Mich., in 1840, of which county he was made deputy clerk in 1842. He entered regularly upon the study of the law in 1844; was admitted to the bar in 1846; became law partner of Isaac E. Gary, at Marshall, Mich., in 1851, and on Mr. Gary's death in 1854, associated Mr. Justin D. Wolley with him, and their co-partnership continued until 1871. By this time Mr. Hughes had become the leader of the bar in Western Michigan, and was esteemed one of the ablest and most successful advocates in the Northwest. The Grand Rapids and Indiana Railroad Company invited him to become its general

counsel, and he removed to Grand Rapids for the purpose, taking with him Thomas J. O'Brien as partner. Soon afterwards Mitchell J. Smiley was received into the partnership, and the firm of Hughes, O'Brien & Smiley transacted a large and very successful business until 1882, when Mr. O'Brien retired, and two sons of Mr. Hughes—D. Darwin, Jr., and Walter—were admitted to a share in the business. By this time premonitions of what proved a mortal disease of the heart had been observed, and the best medical aid was resorted to, but without avail. Mr. Hughes leaves a widow and five children, having lost two children in infancy.

The only offices held by Mr. Hughes were U. S. Commissioner for a short time, Prosecuting Attorney for four years in his early practice, and Mayor of the city of Marshall for one term. He was in politics a Democrat, and his party, then in a hopeless minority, several times made use of his name as a candidate for important offices, voting for him twice for Congress and twice for Justice of the Supreme Court; but he was very little of a partisan, and seemed to have little or no desire for official honors. He was tendered the command of a regiment during the Civil War, but declined it, though he gave active support to the government at all times.

The true field for the intellectual activity of Mr. Hughes was no doubt the bar. He had great logical powers, quick perceptions, and a fine command of language; he was agreeable in person and address; he had a keen sense of right and wrong, and that candor and frankness that always challenged and secured the confidence of the court and the respect of opponents. His addresses were characterized by simplicity and earnestness, and were equally powerful, whether directed to the facts of his case or to the law.

Some few of the cases with which he was connected may be mentioned, because they had in his own state unusual

importance. One of these was *The People vs. The Township Board of Salem*, reported in 20 Mich. 452. The case involved the constitutional power of the municipalities of the state to loan their credit to railroads. The township, under legislative permission, had voted railroad aid, and the township board refused to obey the vote and issue bonds. Mr. Hughes applied to the Supreme Court for a mandamus, and argued the application with great power, but was unsuccessful. The court held the legislation unwarranted, and the business of voting aid to railroads came to an end. It may be mentioned, however, that bonds which had been previously issued and sold were recognized and enforced, and with this outcome Mr. Hughes was content. Another notable case was *Stuart vs. Kalamazoo*, reported in 30 Mich. 69. The case involved the power of the municipalities to provide for giving classical education in the public schools of the state which are supported by taxation. Mr. Hughes appeared for the schools, and the favorable judgment secured has been a landmark in the educational history of the state since its rendition. Another case worthy of mention was *Newcomer vs. Van Dusen*, reported in 40 Mich. 90. The leading question in the case was whether the superintendent of a state asylum for the insane was liable for false imprisonment for the reception and detention, in good faith and by mere error in judgment, of a person committed to him by relatives as insane, but who proved not to be so. In this case, unfortunately, the court was unable to agree upon a conclusion. Mr. Hughes defended the superintendent with great fidelity and earnestness, believing that without a favorable result it was impossible to give either him or the asylum due protection.

Mr. Hughes was familiar with the natural history of the Northwest, and at one time wrote and published valuable papers on ornithology.

NEW YORK.

EDGAR S. VAN WINKLE.

Edgar S. Van Winkle, a son of Peter Van Winkle, an old New York merchant, was born in New York City, August 3, 1810. His mother was a daughter of General Abraham Godwin, of New Jersey, an officer in the Revolutionary army. He finished his classical studies at Nassau Hall Academy at the age of fourteen, and then commenced the study of the law in the office of John P. Jackson, an eminent lawyer and gentleman of Newark. After pursuing the study of the law for several years in Newark, Mr. Van Winkle removed to the city of New York, and entered the office of William Slosson, Esq., who was then an eminent member of the New York bar, with whom he continued until his admission to the bar in 1831.

From the time he was admitted to the bar till shortly before his death, on December 9, 1882, a period of over fifty years, Mr. Van Winkle was actively engaged in the practice of his profession as a lawyer in his native city, New York. He had the entire confidence and respect of all his clients, and to a remarkable degree retained their patronage for many years; and frequently, upon the death of clients, their children became his clients in their parents' places.

No lawyer could have more profound respect for the judicial office than was possessed by Mr. Van Winkle, and it may safely be said of him that when defeated in a cause, he was never known to express to client, friend, or to any one, any disrespect, or to utter an unkind remark against a judge who may have decided against him.

One reason why he was able to accomplish so much in his profession, and always to be serene, unruffled, deliberate,

and clear-minded, was that he never allowed himself to be unnecessarily anxious or worried about results, but believed that when he had carefully prepared himself for the trial or argument of a cause, and had faithfully and to the best of his ability presented his client's interests to the court or jury, his duty was in a great measure ended, and the responsibility for the result to be reached rested upon the tribunal.

It has been well said, in the memorial of Mr. Van Winkle which was prepared for the New York Bar Association by his intimate and life-long friend, Hon. Benjamin D. Silliman, "It is not extravagant to say of him that he was a model lawyer. He had a remarkable career, alike in its duration and its success. His close attention to his studies and his duties was soon rewarded by a large clientage and full practice. Early and always an untiring student, he became master of the general principles of jurisprudence, and especially familiar with that relating to trusts, wills, real estate, and commercial law."

Endowed by nature with rare power of concentrated and continuous thought, and with a sedate but active mind and strong good sense, he gave to every case in which he was engaged, patient and thorough investigation and thought, and his cool, clear conclusions and judgment had as nearly the certainty of mathematics as pertains to the solution of questions of law. Such was the character of his mind that, in every case submitted to him, he sought for the intrinsic right rather than to discover whether, because of some particular decision, his client's case could possibly, right or wrong, be sustained. If it were not clearly tenable, he advised, and in most cases secured, reasonable and proper adjustments and settlements. Had it not been, as it was absolutely with him, a matter of principle to take this course, it would have been wise as a matter of policy; for

where he did proceed with litigation, there was a presumption that the right was on the side he advocated, and courts and juries would feel that it had the sanction of his judgment and convictions. One of his most marked traits was his imperturbable coolness and self-possession. Though quick and sensitive, he was never flurried, and his even balance and judgment were never more conspicuous than in emergencies.

No man in the profession had a more affirmative character for truth, integrity, and honor (if we may use a phrase so tautologous), or had more fully the respect and confidence and warm personal regard of the courts, his brethren of the bar, and of those whose interests were intrusted to him. Invariably dignified, he was courteous toward all, and nobody could be otherwise toward him. Such was his personal and professional standing, that when Daniel Webster, some forty years ago, determined to remove to New York and practise law there, Mr. Van Winkle was selected as his associate, and continued in partnership with him during his residence there, and until public affairs called him to a different sphere.

The high repute of Mr. Van Winkle's office attracted to it as students many young gentlemen preparing for the profession, and among its graduates are numbers since distinguished at the bar, in public life, and as men of letters.

Mr. Van Winkle was one of the founders and the first Vice-President of the New York Bar Association, and, as we all know, one of its most valuable members, taking, until his health became impaired, an active and important part in its affairs and proceedings.

As a companion he was indeed delightful, and as a friend, no man was ever more faithful or affectionate. Intrinsic excellence marked every phase of his character. He was

not a man of professions—a surface man—but sincerity and truth were the law of his nature. His warm and honest heart knew no guile. He was genial, refined, and cordial; abounded in wit and humor, and goodfellowship, while his stores of knowledge were so rich and so varied that his conversation was always attractive and instructive.

In December, 1878, his health gave way, and was never fully restored, though he was able, until within the year preceding his death, to participate in the business of his office. During the last year he became gradually weaker, and at length, without pain or agitation, surrounded by his family and friends, passed gently to his rest. Such had been his pure and useful and upright life, and such his religious faith, that he approached the grave without fear.

He leaves behind him the record of his well-spent years: his good example and honored name, and an ever-abiding place in the hearts of those who love and mourn him.

VIRGINIA.

ROBERT OULD.

Robert Ould, of Richmond, Virginia, was born in Georgetown, D. C., January 31, 1820, and died December 15, 1882. He was liberally educated in the city of his birth, and afterwards at William and Mary College, in Virginia, where he studied law under Judge Beverly Tucker.

Well equipped for his profession, he began its practice in Washington, and by his industry and talents rose rapidly to a high position at that bar.

He was appointed District Attorney by President Buchanan, and was distinguished for skill and eloquence as

a prosecutor; and gained extraordinary reputation for his signal ability in the conduct of the Sickles case, in which he measured swords in not unequal conflict with the late Secretary Stanton, leading counsel for the defense.

His attachment to Virginia was equal to that of her own sons; and when that state seceded in 1861, he removed to Richmond, and cast his lot with the South in the impending strife.

He was so well known, even at that day, for legal learning, and in the branches of public law, which constitute the jurist, that he was appointed by the President of the Confederate states, commissioner for the exchange of prisoners. In this position, until the close of the war, he conducted negotiations for exchange in a candid and manly spirit, and with a noble consideration for the claims of justice, and a tender care of the unfortunate prisoners on both sides. And when the official correspondence is published, it will appear that Robert Ould was "clear in his great office" of all responsibility for the mortality and sufferings of the captives, Federal and Confederate.

Judge Ould was at the surrender of General Lee, and tendered his parole to General Grant, who declined it, holding an agent for exchange not subject to capture. Judge Ould returned to Richmond, and was arrested and put in close confinement by order of Secretary Stanton. A military commission inquired into his conduct, in his absence, and released him after two months' confinement.

Judge Ould remained in Richmond, and forming a partnership with Major Isaac Carrington, the firm attracted a large and lucrative practice.

From 1865 until his death, he stood at the bar of Virginia "if not first, in the very first line." He had the success which follows learning, eloquence, and zeal in the profession, and in these he was surpassed by none of his great competitors.

At *nisi prius*, in chancery, and in the courts of last resort, federal and state, he earned and won the fame of a splendid jurist and a great advocate.

His intellect was of a high order. He was so acute and rapid in his analysis, as to give him that clear perspicacity by which, through the intricate labyrinth of an entangled problem, he discussed the real point of contention. When this pivotal issue was reached, with wondrous fertility and rare skill he summoned to his aid all that industry could extract from authority, or genius and profound study could educe from the realms of reason, philosophy, and imagination. His resources seemed inexhaustible. His logic was compact; his arrangement methodical; his generalizations philosophic; and his eloquence bold, ardent, and at times adorned with the true spirit of poetry.

In debate, his analytic power enabled him to detect quickly the fallacy in his opponent's argument; and he then assailed it with all the weapons of logic, wit, humor, and invective.

He was a great worker. His mind, active and inquisitive, seemed ever fresh and to need no repose. While not as learned as many others, he knew all the avenues of useful investigation; and his very retentive memory, with his orderly processes of thought, kept in well-assorted forms the original and acquired stores of his profound study and extensive reading. Thus, in every case, gathering the learning of the books, he combined the whole array of his marvellous powers and acquirements with concentrated effect to sustain the conclusions he sought to enforce.

It was well said of him by a friend, that, "with such attributes, it is easy to understand that Judge Ould often gained causes which might have been lost, and lost few or none that he ought to have won." And a distinguished Judge has said, "It was not safe for a jury, or even an appel-

late court, to decide a case fresh from the influence of his powerful logic and burning eloquence."

But he was candid, fair, and bold in discussion. He bravely met his foe in open field, and never by subterfuge or evasion shrank from the full force of his opponent's argument. He was too strong to fear the shock of conflict, and too honorable to achieve victory by any but noble means.

To these intellectual gifts were superadded a liberal nature; frank, cordial, and dignified manners; sincerity and constancy in friendship; kindness and gentleness, with which no arrogance mingled, to his associates at the bar, and a respectful deference to the courts before which he appeared; a manly and impressive face and form; a melodious voice; a fervid, not vehement, action, and dauntless courage. In social intercourse his conversation was instructive, while enlivened with wit, humor, and fancy. His home was the seat of a generous, refined, and unostentatious hospitality.

He had an extensive knowledge of political science. Trained in the Virginia school, he held with tenacious consistency the constitutional views of the state rights democracy; and while his broad mind recognized their modification, as required by the new order of things, yet he retained those canons of interpretation, as fundamental principles of his faith, which guarded the reserved authority of the states against any encroachments by the delegated power of the federal government.

He had, since 1870, devoted special study, with extensive reading, to Christian theology. His acquisitions in this field were very remarkable; and as a student, and teacher of students, of the Bible, he gave much of time and labor, in the midst of his busy professional life. The testimony of his pastor, the Rev. Dr. Hoge, to his piety, religious work,

and valuable counsels as an elder in the church, shows how possible it is for an earnest man to be at once a laborious lawyer and a diligent and critical Bible student.

His last appearance was in presenting to the Court of Appeals the proceedings of the bar upon the death of its venerable President, the late Judge Moncure. In his touching eulogy, clothed in an eloquence chaste and beautiful, and rarely equaled, upon a review of the thirty years of his judicial career, he said, in exultant tones: "Let us thank God that he gave to the country such a patriot, to the state such a citizen, to the administration of the law such a magistrate, and to those that loved him such a friend." And then, in solemn and almost plaintive tones, never to be forgotten, he closed his splendid oration with these prophetic words:

"Though a senior to all of us, he has preceded us but a little. The hearts of even the youngest of us are but 'muffled drums, beating funeral dirges to the grave.' Even while we are viewing the procession of the dead, the order comes for us to fall in. And now in this moment, when I am speaking the last words which I will ever utter in the presence of this court, as it is now formed, I can express no better hope for bench and bar than that, when our summons comes, we may receive and welcome it as did our friend and chief."

The eloquent tongue is still, and his voice is hushed forever. In a week he received and welcomed his summons, and in the peace of God entered, as his friend and chief had done, upon his eternal rest.

MEMORANDUM

AS TO THE TIME AND PLACE OF THE NEXT ANNUAL MEETING.

To the Executive Committee of the American Bar Association.

GENTLEMEN,—In obedience to your directions, I sent out a circular to each member, as follows:

BALTIMORE, 10 Sept., 1883.

DEAR SIR,—The Executive Committee of the American Bar Association desire your opinion as to whether the future meetings of the Association shall be called at Saratoga, as heretofore, or at different places in different sections of the country, from year to year. Will you be good enough to inform me, at your earliest convenience, which policy you believe would best subserve the interests of the Association. I enclose you two slips—one in favor of continuing at Saratoga, and the other in favor of a change of policy, and will thank you to return one of them to me, over your signature, within the present month.

As between Saratoga and Chicago, as the place of the next meeting, please indicate, also, which you prefer?

The time has been fixed, as usual, for the latter part of August.

Yours, truly,

EDWARD OTIS HINKLEY *Secretary.*

In answer thereto I have received and counted 504 votes, resulting as follows:

- | | |
|--|-----|
| 1. For Saratoga in 1884, of whom, however, 29 vote for a change, | 250 |
| 2. To continue at Saratoga, of whom, however, some vote for a change, and also some for Chicago, | 248 |
| 3. For Chicago in 1884, | 166 |
| 4. For a change, | 183 |
| 5. From Saratoga in 1884, | 250 |
| Deduct those who vote for change, | 29 |
| | 221 |
| 6. For either Chicago in 1884, or for a change, or for both—that is, combining Nos. 3 and 4 without duplicating, | 221 |

A few do not vote definitely.

Forty-two vote specially, scattering.

From this result I conclude we must meet at Saratoga in 1884, since the vote is nearly three to two as between that place and Chicago.

It is to be noted, however, that as only 221 vote for Saratoga, without change, and the *same number* vote for either Chicago or a change, *the balance hangs even*.

Respectfully submitted,

EDWARD OTIS HINKLEY.

NOTE.—In accordance with the above, the Executive Committee have decided that the next Annual Meeting shall be held at Saratoga Springs, New York, on August 20th, 21st, and 22d, 1884.

MEMORANDUM
OF
SUBJECTS REFERRED TO COMMITTEES.

Resolution of John M. Thomas with reference to the preparation of summaries of the judicial systems of the respective states.

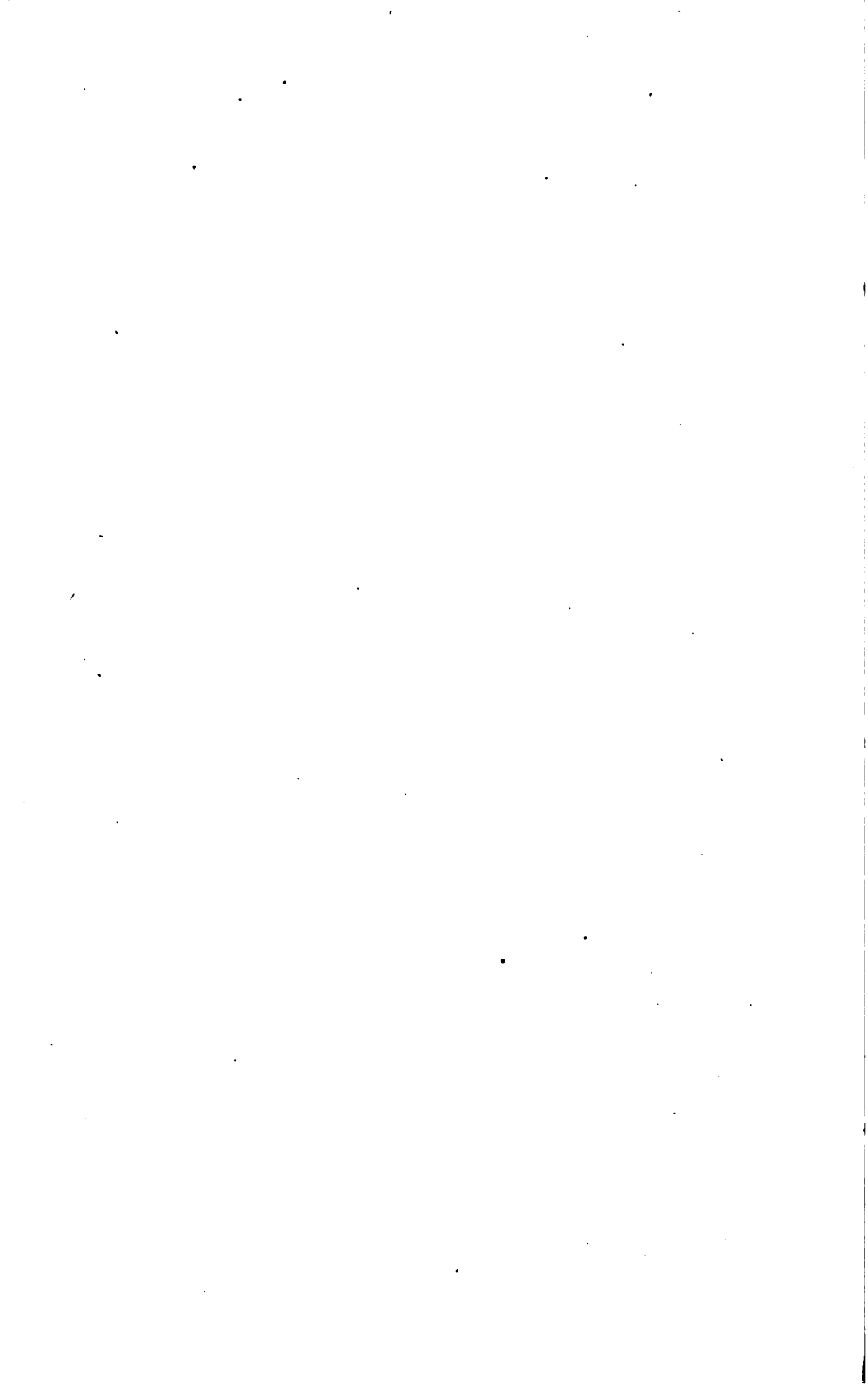
Referred to the Committee on Judicial Administration and Remedial Procedure. (See page 42.)

Report from the Philadelphia Law Association, relating to delays in the Supreme Court of the United States.

Referred to same committee. (See page 72.)

Paper read by Seymour D. Thompson, on "Abuses of the Writ of Habeas Corpus."

Referred to the Committee on Jurisprudence and Law Reform. (See page 73.)



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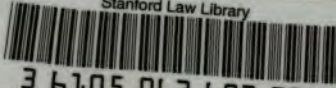




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The 10th Annual Meeting of the American Society of
New York, on the 21st,
and 22d, 1881

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The Seventh Annual Meeting will be held at Saratoga
Springs, New York, on August 20th, 21st,
and 22d, 1884.

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